111-542

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 289.

THADDEUS W. SPINDLE, assignee in bankruptcy of CHARLES U. SHREVE, APPELLANT,

vs.

CHARLES U. SHREVE, JOHN M. SHREVE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 10, 1881.

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1 Pleas in the Circuit Court of the United States for the Northern District of Illinois, begun and held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, Circuit Judge of the United States for the Seventh Judicial Circuit, and the Honorable Henry W. Blodgett, District Judge of the United States for the Northern District of Illinois, on Monday, the twenty-seventh day of September, in the July Term of said court, in the year of our Lord one thousand eight hundred and eighty, and of the independence of the United States the one hundred and fifth year.

WILLIAM H. BRADLEY, *Clerk*.

THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve,
vs.
CHARLES U. SHREVE, JOHN M. SHREVE, Thomas T. Shreve, A. L. Corey, J. W. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan, and L. L. Shreve.
16202. In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and seventy-nine, came said complainant, by Gwynn Garnett, Esq., his solicitor, and filed in the office of the clerk of the circuit court of the United States for said northern district of Illinois, at Chicago, in said district, his bond for costs, and also his bill of complaint against said defendants in said entitled cause. Which said bond and said bill are respectively in the words and figures following, to wit:

Bond for Costs.

In United States Circuit Court for Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee, &c.,
vs.
CHARLES U. SHREVE *et al.*
In Chancery.

I hereby enter myself security for costs in the above entitled cause, and agree to pay all costs that may accrue in said cause to the defendants or any officer of said court.

CHICAGO, February 27th, 1879.

GWYNN GARNETT.

[Endorsed.]

Filed February 27, 1879.

WM. H. BRADLEY, *Clerk*.

3 UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court of the United States for the Northern District of Illinois.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois:

Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, brings this his bill against said Charles U. Shreve, John M. Shreve, Thomas T. Shreve, A. L. Corey, J. W. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan, and L. L. Shreve, and thereupon your orator complains and says that heretofore, to wit, on the 5th day of November, 1869, one Thomas T. Shreve, now deceased, was the owner in fee simple of a large quantity of real and personal property, including the following described parcels of real estate, to wit:

That part of lot eight (8) in block fifty-six (56,) in the original
4 town of Chicago, commencing at a point forty-five (45) feet north of the southeast corner of said lot as the same was originally laid out. and twenty feet north of the present southeast corner of said lot, thence north on the east line of said lot twenty-one and a half (21½) feet, thence westerly parallel to the south line of said lot to the west line thereof, thence south twenty-one and a half (21½) feet, thence east to the place of beginning.

Also lots one (1), two (2), three (3), four (4), five (5), six (6), and seven (7) of lot one (1) in block two (2) in the original town of Chicago.

All being in the city of Chicago, Cook county, Illinois, and in addition thereto said Thomas T. Shreve, now deceased, was the owner at the time aforesaid of all the right, title, and interest which was of his grantors, George F. Rumsey and others, in and to the property lying between the lots last aforesaid, and the centre of the Chicago river.

That on, to wit, the 5th day of November, 1869, the said Thomas T. Shreve died at the city of Louisville, in the State of Ken-
5 tuckey, leaving his last will and testament in writing, which was on or about the 15th day of November, 1869, duly probated and admitted to record in the Jefferson county court, in and for Jefferson county, in the State of Kentucky, and a copy of said will marked Exhibit A is hereto attached and made a part of this bill of complaint; that said Thomas T. Shreve left him surviving his widow, Belle Sheridan Shreve and Charles U. Shreve, Mary E. Goodloe, Mattie Belle Shreve, Thomas William Shreve and Adelle Lawrence Shreve, his only children and heirs-at-law.

Your orator states that in pursuance of the provisions of said will, James W. Henning, A. C. Badger, and A. Harris, (the persons appointed in and by said will to divide said estate,) valued and divided the estate of said deceased as required by said will, they

having been first furnished by said executor, David P. Faneds, with a full and complete list and schedule of said estate, that in making said division they set apart to said Charles U. Shreve (among
6 other parcels of real estate situated in Louisville, Kentucky,)
to be held in trust for him in the manner set forth in said will the premises hereinbefore particularly described; that afterwards, and on or about the 30th day of April, 1870, a suit was instituted in the Louisville chancery court by said David P. Faneds as exeutor as aforsesaid against said widow and heirs-at-law, and Speed S. Goodloe, the husband of said Mary E. Goodloe, and such proceedings were had therein, that on or about the 16th day of June, 1870, an order was made in said cause (the chancellor of said court presiding over the same) appointing John M. Shreve as trustee for said Charles U. Shreve, and at the request of said Charles U. to receive a conveyance of said premises so set apart to be held in trust for said Charles U. as hereinbefore stated; that afterwards, and on or about June 25, 1870, said David P. Faneds, as such executor, conveyed to said John M. Shreve in trust for said Charles U. during his life, as required by said will, the premises hereinbefore particularly described, together with other property
7 which was so designated by said Henning, Badger, and
Harris to be conveyed in trust for said Charles U.

And your orator attaches hereto a copy of said conveyance, marked Exhibit B, and makes the same a part of this bill, by means whereof said Charles U. Shreve became vested with and entitled to a valuable interest in said premises and in the rents, issues, and profits thereof, and such interest was so vested in said Charles U. Shreve at the time of the filing of his petition in bankruptcy, as hereinafter stated.

Your orator states that on or about the 31st day of August, 1878, said Charles U. Shreve filed a petition to be adjudged a bankrupt, together with schedules of his estate and liabilities, in the district court of the United States for the district of Kentucky, and on or about the —— day of ——, 1878, he was duly adjudicated a bankrupt by said court, in accordance with the laws of Congress of the United States, and that your orator was duly appointed assignee of said Charles U. Shreve, and in pursuance of such
8 appointment, Eli U. Murray, register in bankruptcy of
said district court, made and delivered to your orator as such assignee a deed of assignment, dated October 9th, 1878, of the estate and effects of said bankrupt in manner and form required by the said laws of Congress, by means whereof your orator became vested with and entitled to all the right, title, and interest of said Charles U. Shreve in and to said premises hereinbefore described, and in and to the rents, issues, and profits thereof, the same being of great value, to wit, of the value of many thousands of dollars.

Your orator states that on or about the 20th day of June, 1876, said Charles U. Shreve became and was insolvent and wholly unable to pay his debts; that he was then owing large amounts of money to persons who are still his creditors and hold the same claims against him to the amount of about $30,000, and your orator, as such assignee in bankruptcy, now represents the interest of said creditors.

9 Your orator further states, that said Thomas T. Shreve claims some interest in said premises under some pretended instrument of writing, alleged to have been executed by said Charles U. Shreve on or about the 9th day of July, 1877; but your orator avers, that if any such instrument of writing was executed by said Charles U. Shreve, the same was wholly insufficient to transfer to said Thomas T. Shreve any interest in said premises, or in said rents, issues and profits, and that the same was merely a colorable transaction intended to hinder, delay and defraud the creditors aforesaid so represented by your orator; and that the same was made without consideration or for a grossly inadequate consideration, and for the purpose of protecting said property for the benefit of said Charles U. Shreve; and your orator alleges, that at the time of such pretended transfer to said Thomas T. Shreve; he the said Thomas had full notice of the rights and interests of said creditors and of the insolvency of said Charles U. Shreve; and your orator states, that said John M. Shreve continues to recognize the
10 said Thomas T. Shreve as the *cestui que trust* of said premises and refuses to recognize the rights and interests of your orator in the premises, and denies that your orator has any right, title or interest in and to said premises or the rents, issues and profits thereof; and your orator alleges, that said rents, issues and profits amount to several thousand dollars per annum, and the same are in great danger of being lost to your orator unless the said John M. Shreve is restrained by order of this court from disposing of the same otherwise than by payment thereof to your orator; that the improvements on said premises constitute a large part of the value of said property, and that there is now no insurance thereon which will protect the interests of your orator, and the action of said John M. Shreve in refusing to recognize your orator's said rights prevents him from protecting the interests of said creditors in said premises by proper insurance against fire of the improvements on said property.

11 Your orator further states, that A. L. Corey, J. W. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan and L. L. Shreve claim some interest in said premises, but your orator denies that they or any of them have any interest therein.

To the end, therefore, that the said Charles U. Shreve, John M. Shreve, Thomas T. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan, L. L. Shreve, A. L. Corey, J. W. Marley, James P. Brewster, and F. M. Shreve, may full, true, and perfect answer make to all and singular the matters and things therein contained,

(but not under oath,) their oaths and each of them to their answers
being hereby expressly waived; that said John M. Shreve may be
ordered and decreed to account to your orator for the rents, issues,
and profits of all of said premises in the city of Chicago, which he
has received or might have received since the 31st day of August,
1878; that said John M. Shreve may be removed from his trustee-
ship under the said deed from said David P. Faneds, execu-
12 tor, to him, and some other proper person appointed trustee
in his place; that the title of your orator to said interest of
said Charles U. Shreve in said parcels of land in the city of Chicago,
and the rents, issues, and profits thereof may be established and
quieted against the claims of all persons; that a receiver may be
appointed to collect the rents, issues, and profits of said premises,
pending this litigation, and vested with the usual powers of receivers appointed by courts of chancery, and that the defendants hereto may be enjoined by order of this court from interfering with said premises or the rents, issues, and profits thereof, and from setting up or asserting any claim to said interest of said Charles U. Shreve, or the rents, issues, and profits of said premises, adverse to your orator, and that your orator may have such other and further relief as the nature of his case may require, and to your honor may appear just and equitable.

May it please your honors to grant unto your orator not only the
writ of injunction issuing out of and under the seal of this
13 honorable court, to be directed to said defendants, to restrain
them, and each of them, from interfering with said premises,
or the rents, issues, and profits thereof, and from setting up or asserting any claim to said interest in said real estate, or to said rents, issues, and profits adverse to your orator, but also the writ of subpœna to be directed to said defendants, commanding them, and each of them, at a certain day and under a certain pain, to be and appear before your honor in this honorable court, and then and there to answer the premises, and to abide and perform such order and decree in the premies as to your honor shall seem meet. And your orator will ever pray, &c.

THADDEUS W. SPINDLE,
Assignee in Bankruptcy of Charles U. Shreve.

GWYNN GARNETT,
Solicitor and of Counsel.

EXHIBIT A.

Know all men by these presents that I, Thomas T. Shreve, of the
city of Louisville, county of Jefferson, and State of Kentucky,
14 do make and hereby publish this as my last will and testa-
ment:

1. It is my desire that my remains be interred in Cave Hill cemetery, by the side of my late wife, Eliza Ann, and that a place be left next to me for my present wife Belle, if she or her friends should elect for her to be buried there.

2. I give and bequeath four thousand dollars to the children of my deceased sister, Catherine Boyce.

3. I give to my nephew, Dr. William Hewitt, two thousand dollars.

4. I give to the female children of the late G. W. and Charliott Rogers, of Bath county, Kentucky, the sum of four thousand dollars.

5. I give to Susan R. Asbury four thousand dolllars, in trust for the benefit and use of her female children by P. R. Bean, dec'd, late of Mo., to be divided between them in such proportions as she, in her judgment, may think their respective wants and necessities may require.

6. I give three thousand dollars to the present children
15 of A. C. Badger, of Chicago, to be divided and disposed of
by their mother Elvira as she may think best.

7. I give three thousand dollars to the present children of David P. Faneds, to be divided and disposed of by their mother Virginia as she may choose.

The foregoing legacies amounting in the aggregate to twenty thousand dollars I wish paid within six months after my death.

8. I give to my beloved wife, Belle Sheridan Shreve, my residence on the northeast corner of Sixth and Walnut street, together with all the household and kitchen furniture, silver plate, paintings, horses and carriages, and in fact every thing pertaining to my residence of use or ornament, which may be in the house and upon said lot at the time of my death, to be hers in her own right to dispose of and do with as she pleases.

9. After the foregoing special devises I wish all my estate of every character and description, real, personal, and mixed, of which I may die possessed, to be divided into five equal parts having due regard to kind, quality, and income bearing, apportioning to each share its fair proportion of each.

16 10. After said division shall have been made I will that two-
fifths of same be allotted to my two children, Charles U. Shreve
and Mary E. Goodloe, one fifth to each, subject to such conditions
and restrictions as hereinafter named.

11. The remaining three-fifths of said division I will to my wife, Belle Sheridan Shreve, and her three children, Mattie Belle, Thomas William, and Adelle Lawrence Shreve, one fourth to each, also subject to such conditions and restrictions as are hereinafter named.

12. As soon after my death as it can be conveniently done I wish
my executor hereinafter named, after first setting apart a fund suffi-
cient to pay the above named special devises, and incidental ex-
penses, to make out a full and complete list and schedule of all my
estate of every character and description, real, personal, and mixed,
in the State of Kentucky and elsewhere, and hand the same to the
following named persons, to wit, James W. Henning, A. C. Badger,
and A. Harris, who, or any two of whom, I desire to proceed
17 to value it, and divide it into five equal shares upon the prin-

ciples hereinbefore indicated; one half of each share (which half I wish to be income paying real estate) I desire to be set apart and conveyed to a trustee to be held for the use and benefit of each child during his or her life, and then descend to his or her heirs, without any power or right on the part of said child, to encumber said estate, or anticipate the rents thereof, but said trustee shall collect said rents, and after paying taxes, insurances, and keeping the property in repair, pay the rent to the child in person quarterly, or as the same may be collected according to the terms of the lease; the other half of each share I wish conveyed to each child in fee, to do with as she or he may please.

In placing these restrictions upon one-half of the estate I give my children, I do not wish it understood that I distrust their capacity to manage their own affairs, for I do not, but believe one-half of a share that each will receive will afford ample means to commence and conduct a respectable business, and as the other
18 half will give them a comfortable living in the event they should be unfortunate in business or otherwise, and now having it in my power, it is my pleasure, as I believe it to be my duty, to shield and protect them against casualties and accident as far as possible.

13. Should the commissioners (above-named) to divide my estate decline to act, I wish the chancellor of the Louisville chancery court to appoint three discreet persons for that purpose. I also wish the chancellor of said court to appoint trustees for my children; for my adult children such persons as she or he may nominate, and for my minor children such persons as their mother may name, provided, however, in each case the chancellor shall be satisfied that the party named is discreet and competent, and in every respect suitable for the position.

14. The one-fourth of three-fifths of my estate devised to my wife I give to her in fee, to do with as she pleases.

15. After my estate shall have been divided by the commissioners, I wish their report of division to be recorded in the Jef-
19 ferson county court clerk's office, and my executor hereinafter named to make the deliveries, transfers, and conveyances, according to said report, and the directions in this will.

15. I appoint my wife, Belle Sheridan Shreve, guardian for our three children, Mattie Belle, Thomas William, and Adelle Lawrence, and request the judge of the county court to allow her to qualify without security.

I desire her to keep the children with her, and direct their education, and for fear of some casualty the income from the property devised to my wife and the income from the half of the childrens' property, which will come to her hands as their guardian, may not be sufficient to enable them to live in a style commensurate with their means, I hereby direct the trustees of said children, if required by my wife, to pay over to her one-half of the current net revenue derived from the property of each child which may come to their hands, and her receipt for same shall be a full acquittance to said trustee for same.

The accumulating income of each infant child I wish in-
20 vested in good interest bearing securities every year until he
or she shall become of age or marry.

The income which has once been invested shall not be disturbed until it shall be thought advisable by the chancellor of the Louisville chancery court to use it to improve vacant real estate.

It is only the current accruing income which may be handed over to my wife as above set forth.

In making this will I have considered this matter well, and it has been and is my object to do exact justice to my wife and each of my children.

It is true I give to each of my two oldest children rather more than I give to my younger children, but my reason for doing so is that they are grown, and having families of their own, their present necessities are much greater, and if the interests of my younger children are reasonably well looked after and properly cared for, after supporting, clothing, and educating them, their shares will be much larger than the two older children by the time they become of age.

If I did not wish to dispose of my property in different
21 manner from the way it would descend by law, I would not
make this will, and having made it, I do not want it disturbed.

If left to herself I am satisfied my wife would not renounce the provisions I have made, for which I consider ample and liberal, but if she should be persuaded to do so and thereby materially lessen the present income of my two older children in order to compensate them for the said loss, I hereby will and devise to them two-thirds of my entire estate instead of two-fifths, and the other third to my three younger children, to be equally divided betwixt them, but under the same restrictions and conditions hereinbefore set forth.

I hereby appoint David P. Faneds executor of my estate, and request the court to allow him to qualify without giving any security, his compensation therefor to be two thousand dollars.

In witness whereof, I have hereunto set my hand, this 1st day of March, 1867.

T. T. SHREVE.

Signed in presence of—
22 A. HARRIS.
FRANCES HAGER.

EXHIBIT B.

By the last will and testament of Thomas T. Shreve, which was probated in the Jefferson county court, State of Kentucky, and the same is duly recorded in the clerk's office of said county court, Will book No. 7, page 109, certain specific legacies and devises are made, after which, in the ninth clause of said will, the following language is used : " After the foregoing special devises I wish all my estate of every character and description, real, personal, and mixed, of which I may die possessed, to be divided into five equal parts having due regard to kind, quality, and income bearing, apportioning to each share its fair proportion of each kind."

SECTION 10. "After said division shall have been made, I will that two-fifths of same be allotted to my children, Charles U. Shreve and Mary E. Goodloe, one-fifth to each, subject to conditions and restrictions as hereinafter named.

SECTION 11. "The remaining three-fifths of said division 23 I will to my wife, Belle Sheridan Shreve, and her three children, Mattie Belle, Thomas William, and Adelle Lawrence Shreve, one-fourth to each, also subject to such conditions and restrictions as are hereinafter named.

SECT. 12. As soon after my death as it can be conveniently done, I wish my executor hereinafter named, after first setting apart a fund sufficient to pay the above-named special devises and incidental expenses, to make out a full and complete list and schedule of all my estate of every character and description, real, personal, and mixed, in the State of Kentucky and elsewhere, and hand the same to the following named persons, to wit, James W. Henning, A. C. Badger, and A. Harris, who, or any two of whom, I desire to proceed to value it and divide it into five equal shares upon the principles hereinbefore indicated, one-half of each share (which half I wish to be income paying real estate) I desire to be set apart and conveyed to a trustee to be held for the use and benefit of each child during his or her life and then descend to his or her 24 heirs, without any power or right on the part of said child to encumber said estate or anticipate the rents thereof, but said trustee shall collect said rent, and after paying taxes, insurance, and keeping in repair, pay the rent to the child in person quarterly, or as the same may be collected, according to the terms of the lease."

In the 13th clause of said will the following language is used: "I also wish the chancellor of the Louisville chancery court to appoint trustees for my children, for my adult children, such persons as he or she may nominate, and for my minor children such persons as their mother may name, provided, however, in each case the chancellor shall be satisfied that the party named is discreet and competent and in every respect suitable for the position."

By the terms of said will David P. Faulds was named as the executor thereof; he qualified as such in the Jefferson county court of the State of Kentucky, and took upon himself the burden of the same in pursuance thereof; he made out and presented to the commissioners in said will designated, viz., James W. Henning, A. C. 25 Badger, and A. Harris, a full and complete list of the estate of T. T. Shreve, after deducting the sums sufficient to pay the special legacies and expenses of administration, as directed, and the said commissioners valued, assigned, and allotted said real and personal estate, as directed in said will, between the devisees under the same, assigning and allotting to each the one-half of the share respectively to be held in trust during the lives of the said children; and the same was returned to the Jefferson county court and by said court approved and recorded in the clerk's office of said Jefferson county. In which report there is set apart and allotted to the devisee, Charles U. Shreve, to be held in trust as aforesaid, the following described real estate, viz:

A lot, with the improvements thereon, in the —— of Chicago, Cook Co., Illinois, *one* the west side of South Clark street, being that part of lot eight, (8,) in block fifty-six, (56,) in the original town, commencing at a point forty-five (45) feet north of the southeast corner of said lot as the same was originally laid out, and
26 twenty feet north of the present southeast corner of said lot;
thence north on east line of said lot twenty-one and a half feet, (21½;) thence westerly, parallel with the south line, to the west line of said lot; thence south $21\frac{6}{12}$ feet; thence east to the beginning; same conveyed by Harper and wife to Thos. T. Shreve, Aug. 1st, 1865, recorded Book of Deeds No. 316, page 65. Also the property in the city of Chicago, Cook county, Illinois, called Shreve's Dearborn St. water lot, known as subdivision lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) and seven, (7,) of lot No. one, (1,) in block two, (2,) in the original town, with all the right, title, and interest of the grantors to the property lying between said sub-lots and the center of Chicago river, and subject to the dower of Mrs. Catherine Russell; same conveyed to T. T. Shreve by Geo. F. Rumsley and others Oct. 2d, 1865, recorded Book of Deeds 314, page 363. Also a lot of land, with the improvements, in the city of Louisville, State of Kentucky, fronting fifty-two and a half feet on the north side of Green street, and extending back same
27 width one hundred feet to a ten-foot alley, and bounded on
the east by Fifth street; deed from Forsythe, and also by commissioners in chancery, 21 February, 1845, Book 63, page 559, to T. T. Shreve, and from Bank of Louisville to same, Feb. 6, 1845, Book 63, page 413.

Also a lot with improvements in the city of Louisville, Kentucky, fronting twenty-two feet on north side of Market street by 210 feet deep, the west line being 165 feet east of Fourth street; deed from Wm. T. Spumier and wife to T. T. Shreve, 21st July, 1846, Book 66, page 46–7–8. And whereas the said David P. Faneds, as executor as aforesaid, instituted a suit in the Louisville chancery court, No. 23495, against Belle Sheridan Shreve, Charles U. Shreve, Mattie Belle Shreve, Thomas William Shreve, Adelle Lawrence Shreve and Mary E. Goodloe and her husband, Speed S. Goodloe, the devisees under said will, for the purpose of settling his executorial accounts, and for the nomination and appointment of trustees for each of said devisees under said will, and by the proceedings had in said case the said Charles U. Shreve named and rec-
28 ommended Jno. M. Shreve as a suitable person to act as
trustee, to hold and control the property so devised and set apart, assigned, and allotted him under the will of said Thos. T.

Shreve; and whereas, by an order and judgment of said court, made and entered in said case, the chancellor of Louisville chancery court constituted and appointed Jno. M. Shreve as trustee, to take to himself as such a deed of conveyance from said executor for the real estate so designated and allotted to the said Chas. U. Shreve, and said David P. Faulds was, by said decree and judgment aforesaid, ordered to make said conveyance in compliance with said decree and order and requirements of said will.

Therefore, this indenture witnesseth, that the said David P. Faulds, as executor of the last will and testament of Thomas T. Shreve, deceased, of the first part, for and in consideration of the premises hereinbefore recited, and for the further sum of one dollar in hand paid and for the purpose of dividing the real estate of
said Thomas T. Shreve between the devisee, under the will
29 agreeable to, and in conformity with, the report of said commissioners so as aforesaid made and returned to the clerk's office of the Jefferson county court, hath this day granted, bargained and sold, and doth by these presents grant, bargain, sell, alien, enfeoff, and convey unto Jno. M. Shreve, as trustee of and in trust for Chas. U. Shreve, one of devisees of said Thomas T. Shreve, of the second part, all the within and foregoing real estate so situated and being in the city of Chicago, and the county of Cook, State of Illinois, as well as the said real estate situated and being in the city of Louisville, county of Jefferson, and State of Kentucky.

Together with all and singular the improvements, rights, privileges, and appurtenances thereunto, and the several pieces and parcels thereof appertaining the same, to be held by said trustee, party of the second part, for the use and benefit of said Chas. U. Shreve during his life, and then to descend to his heirs without any power or authority of said Chas. U. Shreve to encumber said estate or anticipate the rents thereof; but said trustee shall collect said
30 *said* rents, and after paying taxes, insurance, and keeping the
property in repair pay the rent to the said Chas. U. Shreve in person quarterly, or as the same may be collected, according to the leasing thereof, and with all other rights, duties, powers, and restrictions as are conferred and imposed by the will of said Thos. T. Shreve, deceased.

To have and to hold the same unto the said party of the second part, his successors or assigns, the right and title to the same, and to each and every part thereof, with the rights, powers, restrictions, and duties as aforesaid, the said party of the first part doth hereby, as executor as aforesaid, and in that capacity alone, doth covenant to and with the party of the second part to defend the title to the same unto the said party of the second part, as trustee, to be free from the claim or claims of himself and his successors, and against the claim or claims of all and every person or persons whatever.

In witness of all which the said David P. Faulds, as executor of

THADDEUS W. SPINDLE, Assignee in Bankruptcy of
Charles U. Shreve.
vs.
CHARLES U. SHREVE, JOHN M. SHREVE, THOMAS T.
Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina
Shreve, Mary E. Shreve, Charles U. Shreve, Jr.,
James Buchanan, L. L. Shreve, A. L. Corey, J.
W. Marley, James P. Brewster, and L. M. Shreve.
} In Chancery.

On motion of complainant, by his solicitor, Gwynn Garnett, upon
affidavit filed showing that the defendants Charles U. Shreve, John
M. Shreve, Thomas T. Shreve, Sallie B. Shreve, Sallie T. Shreve,
Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., L. L.
Shreve, and James Buchanan, are not inhabitants of or
36 found within the said northern district of Illinois, and that
they have not voluntarily appeared in said cause, it is ordered
by the court that said defendants do each appear, plead, answer, or
demur to the bill of complaint herein by the first Monday of June,
A. D. 1879, and it is further ordered that a copy of this order be
served upon said defendants so ordered to appear, twenty days before said first Monday af June, A. D. 1879, if practicable.

Afterwards, to wit, on the third day of June, A. D. 1879, defendants, except Charles U. Shreve, by their solicitors, filed in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance of Def'ts, except C. U. Shreve.

In tne Circuit Court of the United States for the Northern District
of Illinois. Gen. No. 16202.

CHARLES U. SHREVE, JOHN M. SHREVE, THOMAS T.
Shreve, A. L. Corey, J. M. Marley, James P.
Brewster, L. M. Shreve, Sallie B. Shreve, sued
by the name of Sallie P. Shreve, Sallie T. Shreve,
Evie E. Shreve, sued by name of Eveline Shreve,
Minnie E. Shreve, sued by name of Mary E.
Shreve, James Buchanan, impleaded with Charles
U. Shreve, Jr., and L. L. Shreve,
37 *ads.*
THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve.
} In Chancery.

I hereby enter my appearance in the above-entitled cause as solicitor for all of the above-named defendants, except Charles U. Shreve, Jr., and L. L. Shreve.

CHICAGO, *June* 2, 1879.

CHARLES A. GREGORY,
Solicitor for said Defendants, excepting as above excepted.

And L. M. Shreve, solicitor, hereby also enters his appearance in the above cause for and on behalf of the same defendants as last above referred to, excepting those above excepted.

L. M. SHREVE.

[Endorsed.]

Filed June 3, 1879.

WM. H. BRADLEY, *Cl'k.*

Afterwards, to wit, on the 6th day of June, A. D. 1879, in the record of the proceedings of said court in chancery in said entitled cause, before the Hon. Henry W. Blodgett, district judge, appears the following entry, to wit:

THADDEUS W. SPINDLE, Assignee, &c.,
vs.
CHARLES U. SHREVE *et al.*
} In Chancery.

38 On motion, it is ordered by the court that Charles A. Gregory be, and he is hereby, appointed guardian *ad litem* for the infant defendants, Charles U. Shreve and L. L. Shreve.

Afterwards, to wit, on the sixth day of June, A. D. 1879, came the defendants, Charles U. Shreve, John M. Shreve, A. L. Corey, J. M. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Eveline Shreve, Mary E. Shreve, and James Buchanan, by Charles A. Gregory, their solicitor, and filed in said clerk's office their joint and several answer to the complainant's bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

39 *Answer of Charles U. Shreve, John M. Shreve, A. L. Corey, J. M. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Eveline Shreve, Mary E. Shreve, and James Buchanan.*

In the Circuit Court of the United States in and for the Northern District of Illinois. In Chancery. Of the May Term, 1879.

THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles W. Shreve,
vs.
CHARLES U. SHREVE, JOHN M. SHREVE, THOMAS T. Shreve, A. L. Corey, J. M. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Eveline Shreve, Mary E. Shreve, James Buchanan, impleaded with Charles U. Shreve, Jr., and L. L. Shreve.
} Gen. No. 16202.

The joint and several answer of Charles U. Shreve, John M. Shreve, A. L. Corey, J. M. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Eveline Shreve, Mary E. Shreve, and James Buchanan to the bill of complaint of Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve.

These defendants, reserving to themselves all right of exception

to the said bill of complaint, for answer thereto say, that it
40 is true that one Thomas T. Shreve died seized in fee of the
premises described in said bill of complaint on the fifth (5th) day of March, 1869, at Louisville, in the State of Kentucky, testate, and leaving him surviving his widow, Belle Sheridan Shreve, and his five children, namely, Charles U. Shreve, Mary C. Goodloe, Mattie Belle Shreve, Thomas William Shreve, and Adelle Lawrence Shreve, his sole heirs-at-law.

And these defendants further answering say, they admit that the last will of said decedent is correctly set forth in the copy thereof attached to said bill of complaint, marked Exhibit A, and that the same was duly probated, &c., as alleged in said bill of complaint, and that such proceedings were had in pursuance thereof; that the executor named in said will, the said David P. Faulds, did, by deed dated June 25, 1870, convey in trust to said John M. Shreve, trustee, to hold the same in accordance with the trusts declared in said will, the said premises described in said bill of complaint. And these defendants admit that a correct copy of such deed is attached to said bill of complaint as Exhibit B; but these defendants say they are advised that, as matter of law, the said Charles U. Shreve never became vested with or entitled to any valuable interest in said premises, or in the rents, issues, and profits thereof, but was equitably interested in the execution of the power conferred by said will upon the trustee thereunder to be appointed.

41 And these defendants say that they are not sufficiently
advised in the law to say whether said Charles U. Shreve, at the time of filing his petition in bankruptcy, or at the time of his being adjudicated a bankrupt, as stated in said bill, was entitled to any interest, either in law or in equity, in said lands and premises, or in the rents, issues, and profits thereof; but they insist that whatever rights or interest in any of the said premises, or in the rents, issues, or profits thereof, the said Charles ever had before that time, which could be the subject of conveyance, or which could be made in any manner whatever liable to his, said Charles' debts, or answerable to the demands of the creditors of said Charles were, by virtue of a certain sale and a certain instrument in writing from said said Charles to one Thomas T. Shreve, one of the defendants in this suit, long before the said bankruptcy, *vested* in said Thomas T. Shreve, and were so vested at the time of such bankruptcy, and have so remained ever since hitherto, and that afterwards the aforesaid sale and conveyance was confirmed and further perfected by a certain deed of conveyance of all the interest of said Charles in and to said premises, from said Charles to this defendant, as will further appear by matter hereinafter set forth.

And these defendants further answering admit that the said
Charles was, on or about the 31st day of August, 1878, adju-
42 dicated a bankrupt, and that such further proceedings were
had in the matter of such bankruptcy as are set out in said bill of complaint, and that said complainant became thereby, and is,

the assignee in bankruptcy, holding a deed of assignment, as mentioned in said bill. But these defendants deny that therein and thereby, as averred in said bill, or in any other way, said complainant ever became vested with any right, title, or interest in any part of said premises, or the rents, issues, and profits thereof.

These defendants further say that they deny that on or about the (20th) twentieth day of June, 1876, the said Charles became and was insolvent, but in that regard they say that at that time he was possessed of large estates in real and personal property and choses in action of the value of many thousands of dollars, and vastly more than sufficient in value at fair valuations to pay all said Charles' debts in full, and said Charles then at the time last aforesaid fully believed in good faith that his estate would more than pay all his debts in full; and therefore, for the purpose of paying his said debts, the said Charles did on or about the 20th day of June, 1876, make a voluntary assignment in writing of all his estate real, personal, and mixed, unto said John M. Shreve, as trustee and assignee for the benefit of all the creditors of said Charles; and afterwards such
proceedings were had thereunder and therein that said James
43 Buchanan succeeded said John M. Shreve, as such trustee
and assignee; and said John M. Shreve and said Buchanan, each in turn, entered upon the execution of such trust, and said Buchanan afterwards filed his bill in chancery against this said Charles and others, and said John M. Shreve, as trustee under said will, to subject the same premises as aforesaid to the debts of said Charles.

And these defendants say it is true that on or about the ninth (9th) day of June, 1877, said Charles executed, acknowledged, and delivered at Louisville, Kentucky, where said parties to the said writing then resided and still reside, to said Thomas T. Shreve, an instrument in writing, which was on, to wit, the 13th day of July, 1877, duly recorded in the recorder's office of Cook county, Illinois, in Book 656 of Deeds, page 554, purporting to convey and conveying to said Thomas Shreve all the right, title, and interest of said Charles in and to the said premises; that said instrument was made in accordance with the forms required by law in the State of Kentucky for conveying real estate, but that said instrument, as a conveyance of real estate not being required by the laws of Kentucky to have a seal, was in fact executed without any seal of said Charles, or sign representing a seal placed thereon; and that afterwards, to wit, on the 2d day of November, 1878, the
said Charles made, executed, acknowledged, and delivered
44 to said Thomas T. Shreve another instrument in writing
having the seal *the seal* thereon of said Charles purporting to convey, and conveying the said premises unto said Thomas T. Shreve so far as it was legally competent for said Charles to convey the same. And these defendants further answering say they deny that such instrument of writing, of date of June 9, 1877, or said deed of November 2, 1878, was colorable merely, and deny that the

in the exhibits marked Exhibit No. 1, and attached hereto, which these defendants pray may be taken as a part of this answer.

And these defendants aver that this present complainant 49 had notice before he brought this present suit that said Buchanan's said bill was still pending before and at the time when he brought this present suit.

And these defendants pray to be hence dismissed, with their costs and charges in this behalf sustained.

CHARLES A. GREGORY,
Solicitor for above-named Defendants.

CHARLES A. GREGORY AND
L. M. SHREVE, *Counsel.*

[Endorsed.]

Filed June 6, 1879.

W. H. BRADLEY, *Clerk.*

Afterwards, to wit, on the seventh day of June, A. D. 1879, came said complainant, by his solicitor, and filed in said clerk's office the certified copy of rule, with affidavit of service thereto annexed, upon absent defendants in said entitled cause, which said copy of rule and affidavits are in the words and figures following, to wit:

Copy of Rule.

United States Circuit Court, Northern District of Illinois.

MONDAY, *April* 14*th*, A. D. 1879.

Present, the Hon. Henry W. Blodgett, district judge.

50 THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve,
vs.
CHARLES H. SHREVE, JOHN M. SHREVE, THOMAS T. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan, L. L. Shreve, A. L. Corey, J. W. Marley, James P. Brewster, and L. M. Shreve.
} In Chancery.

On motion of complainant, by his solicitor, Gwynn Garnett, upon affidavit filed, showing that the defendants, Charles U. Shreve, John M. Shreve, Thomas T. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., L. L. Shreve, and James Buchanan, are not inhabitants of or found within the said northern district of Illinois, and that they have not voluntarily appeared in said cause, it is ordered by the court that said defendants do each appear, plead, answer, or demur to the bill of complaint herein by the first Monday of June, A. D. 1879; and it is further ordered that a copy of this order be served upon said defendants so ordered to appear twenty days before said first Monday of June, A. D. 1879, if practicable.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

51 I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 14th day of April, A. D. 1879, in the cause wherein Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, is the complainant, and Charles U. Shreve *et al.* are the defendants, as the same appears from the *the* original records of said court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this 14th day of April, A. D. 1879.

[SEAL.] WM. H. BRADLEY, *Clerk.*

STATE OF KENTUCKY, *Jefferson County,* } *ss:*

Joseph Rosenberg, being duly sworn, deposes and says that he has served the above certified order of the United States circuit court, for the northern district of Illinois, on the following named defendants mentioned therein, by delivering to each defendant a true copy of said order in person, viz: On Charles U. Shreve and Thomas T. Shreve on the 17th ot April, 1879, and on John M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., L. L. Shreve, and James
52 Buchanan, on the 23d day of April, 1879.

JOSEPH ROSENBERG.

Subscribed and sworn to before me, a notary public for said county and State, by Joseph Rosenberg, who is personally known to me, this 23d day of April, 1879.

[NOTARIAL SEAL.] J. SPEED PEAY,
Notary Public.

STATE OF ILLINOIS, *Cook County,* } *ss:*

William Garnett, Jr., being duly sworn, deposes and says that he served the above certified order of the United States circuit court for the northern district of Illinois on the following named defendants mentioned therein by delivery to each defendant a true copy of said order in person: On L. M. Shreve, N. J. Aiken, Anna Shock, and James P. Brewster, on the 17th day of April, A. D. 1879, at 134 Clark street, in Chicago, Cook county, Illinois; the said persons being in possession of a part of the premises described in the bill in the within named cause.

WILLIAM GARNETT, JR.

Subscribed and sworn to before me by said William Garnett, Jr., who is personally known to me, this 24th April, A. D. 1879.

[NOTARIAL SEAL.] FARLIN Q. BALL,
53 *Notary Public in and for State and County aforesaid.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of United States for Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee, &c.,
vs.
CHARLES U. SHREVE *et al.* } In Chancery.

William Garnett, Jr., being duly sworn, states on oath that on the 6th day of June, 1879, he delivered to Thomas Bagley a true copy of the order hereto attached, and to Thomas N. Bond a true copy of said order; that said Bond, as agent of the Western Transportation Company, and said Bagley are in possession of lot one (1), in block two (2), of the original town of Chicago; and affiant states that on the 17th day of April, 1879, James P. Brewster, L. M. Shreve, N. J. Aiken, and Anna Shock were in possession of the other lot described in said bill as a part of lot 8, in block 56, in said original town of Chicago.

WILLIAM GARNETT, JR.

Subscribed and sworn to before me, this 6th day of June, 1879.

[NOTARIAL SEAL.] JOHN S. MILLER,
Notary Public.

[Endorsed.]

Filed June 7, 1879.

WM. H. BRADLEY, *Clerk.*

54 Afterwards, to wit, on the ninth day of June, A. D. 1879, came said defendant, Thomas T. Shreve, by his solicitor, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Thomas T. Shreve.

UNITED STATES OF AMERICA, *Northern District of Illinois.*

In the Circuit Court of the United States in and for the Northern District of Illinois. In Chancery. May Term, 1879.

THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve,
vs.
CHARLES U. SHREVE, JOHN M. SHREVE, THOMAS T. SHREVE and others. } Gen. No. 16202.

The answer of Thomas T. Shreve, one of the defendants to the bill of complaint of Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, complainant in the above-entitled cause.

This defendant, reserving to himself all manner of benefit and advantage of exception to the said bill of complaint, answering,
55 says, that it is true that one Thomas T. Shreve, the grandfather

of this defendant, deceased, died seized in fee of the premises described in said bill of complaint, on the fifth day of March, 1869, at Louisville, Kentucky, testate, and leaving him surviving his widow, Belle Sheridan Shreve, and his five children, viz., Charles U. Shreve, Mary C. Goodloe, Mattie B. Shreve, Thomas William Shreve, and Adelle Lawrence Shreve, his sole heirs-at-law.

And the defendant, further answering, says he admits that the last will of said decedent is correctly set forth in the copy thereof attached to said bill of complaint, marked Exhibit A, and that the same was duly probated, &c., as alleged in said bill of complaint, and that such proceedings were had in pursuance thereof; that the executor named in said will, the said David P. Faulds did, by deed dated June 25, 1870, convey in trust to said John M. Shreve, trustee, to hold the same in accordance with the trusts declared in the said will, the said premises described in said bill of complaint, and this defendant admits that a correct copy of such deed is attached to said bill of complaint as Exhibit B, but this defendant says he is not advised whether, as matter of law, Charles U. Shreve became vested with or entitled to any valuable interest in said premises, or in the rents, issues, or profits thereof; and this defendant denies that said
Charles, at the time of filing his petition in bankruptcy, as
56 stated in said bill, and hereinafter mentioned, was entitled to
any interest either in law or in equity, either in said lands and premises, or in the rents, issues, or profits thereof, but, on the contrary, says that whatever rights or interest in any of the said premises, or in the rents, issues, or profits thereof, the said Charles ever had before that time, had by virtue of a certain sale and a certain instrument in writing from said Charles to this defendant, long before the said bankruptcy, became vested in this defendant, and were so vested at the time of said bankruptcy, and have so remained ever since hitherto; and afterwards, such sale and conveyance was confirmed and further perfected by a certain deed of conveyance of all the interest of said Charles in and to said premises from said Charles to this defendant hereinafter referred to.

This defendant, further answering, admits that the said Charles was on the 31st day of August, 1878, adjudicated a bankrupt, and that such further proceedings were had in the matters of such bankruptcy as are set forth in said bill of complaint, and that said complainant herein became thereby and is the assignee in bankruptcy, holding a deed of assignment as mentioned in said bill of complaint, but this defendant denies that therein and thereby, as averred in said bill, or in any other way, said complainant ever
became vested with any right, title, or interest in any part of
57 said premises, or the rents, issues, and profits thereof.

This defendant, further answering, denies that on or about the 20th day of June, 1876, said Charles became and was insolvent, but admits said Charles was then owing money to some persons who are still his creditors, but how much and to whom this defendant is unable to state, and admits that the complainant legally represents the said creditors. This defendant says that in June, 1876, said Charles had and owned a large amount of property, real, personal, and mixed, and, as this defendant is informed and believes, then at that time of great value, and more than sufficient at the then valuations of the same to pay all said Charles' debts in full, without reckoning the premises in said bill mentioned, or any part of said Charles' estate, and that this defendant did not in the month of June, 1877, (1877,) know or believe said Charles to be unable to pay all his debts in full.

This defendant, further answering, says this defendant claims to own and does own all the interest in said premises, and the rents, issues, and profits thereof, which ever were in any way vested in said Charles, and says it is true, as alleged in said bill of complaint, that on or about the 9th day of June, (1877,) 1877, said Charles executed, acknowledged, and delivered at Louisville, Ky., where said parties then resided and still reside, to this defendant an instrument in writing, which was on, to wit, the 13th day of July, (1877,) 1877, duly recorded in the recorder's office of Cook county, Illinois, 58 in Book 656 of Deeds, page 554, purporting to convey to this defendant all the right, title, and interest of said Charles in and to said premises; that said instrument was made in accordance with the forms required by law in the State of Kentucky for conveying real estate, but that said instrument, as a conveyance of real estate not being required by the law of Kentucky to have a seal, was in fact executed without any seal of said Charles or sign representing a seal placed thereon; and that afterwards, to wit, on the 2d day of November, 1878, the said Charles made, executed, and acknowledged, and delivered to this defendant another instrument in writing, having the seal thereon of said Charles, conveying the said premises unto this defendant; which said last-mentioned deed, together with the said former instrument of writing, this defendant is ready to produce on the hearing of this cause.

And this defendant, further answering, denies that such instrument of writing, or such sale above referred to as of the date of June 9, 1877, was merely colorable, and denies that the same was intended to hinder or delay or defraud any creditors of said Charles, and denies that the same was made for an inadequate consideration; but, on the contrary, says that the same was for the consideration of five hundred dollars in money, and the taxes then due on said premises, amounting to a large sum, say about two thousand dollars, which taxes this defendant assumed and agreed to pay 59 in part consideration of such sale, and which this defendant did actually pay, and said five hundred dollars was actually agreed to be paid by this defendant to said Charles as part of the consideration of such sale, and was paid by him at and about the time of said sale. And this defendant denies all fraud and bad faith in said transaction on the part of either said Charles or of this defendant. And further answering, denies that complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and prays the same advantage of this answer as if he had pleaded or demurred to the said bill of complaint for want of equity, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

T. T. SHREVE.

CHARLES A. GREGORY AND
L. M. SHREVE, *Of Counsel.*

STATE OF KENTUCKY, }
County of Jefferson, } *ss:*

Thomas T. Shreve, being first duly sworn, says he has read the foregoing answer by him subscribed, and that the same is true, as he verily believes.

T. T. SHREVE.

Subscribed and sworn to before me, this —— day of June, 1879, at Louisville, Jefferson county, Kentucky.

[SEAL.] BRYAN H. ALLEN,
Notary Public for Jefferson County, Ky.

[Endorsed.]

Filed June 9, 1879.

W. H. BRADLEY, *Clerk.*

60 Afterwards, to wit, on the thirteenth day of June, A. D. 1879, there was filed in said clerk's office the answer of Charles U. Shreve, Junior, and Leven L. Shreve, infant defendants, by Charles A. Gregory, Esq., their guardian, *ad litem*, which said answer is in the words and figures following, to wit:

Answer of C. U. Shreve, Jr., and L. L. Shreve.

In the Circuit Court of the United States, in and for the Northern District of Illinois, of the May Term, 1879.

THADDEUS W. SPINDLE, Assignee of Charles U. Shreve, Bankrupt,
vs. } In Chancery.
CHARLES U. SHREVE, JOHN M. SHREVE, *et als.*

The answer of Charles U. Shreve, Junior, and Leven L. Shreve, infants, said Charles U. Shreve, Jr., aged sixteen years, and said Leven L. Shreve, aged thirteen years, by Charles A. Gregory, of Chicago, Illinois, counsellor-at-law, their guardian *ad litem*, to the bill of complaint of Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, complainant.

These defendants, answering by their guardian *ad litem*, say they are infants, of the respective ages above stated, and they 61 therefore submit their rights and interests in the matter in question in this cause to the tender consideration and protection of this honorable court, and pray strict proof of the matters alleged in said bill of complaint.

CHARLES U. SHREVE, JUNIOR.
LEVEN L. SHREVE.
By CHARLES A. GREGORY,
Their Guardian ad litem.

CHARLES A. GREGORY,
Of Counsel.

[Endorsed.]

Filed June 13, 1879.

W. H. BRADLEY, *Cl'k.*

Afterwards, to wit, on the thirteenth day of June, A. D. 1879, in the record of the proceedings of said court in chancery, before the Hon. Henry W. Blodgett, district judge, appears the following entry, to wit, in said entitled cause:

THADDEUS W. SPINDLE, Assignee, &c.,
vs. } In Chancery.
CHARLES U. SHREVE *et als.*

On motion of complainant's solicitor, and by agreement of the parties, it is ordered by the court that John C. Wharton, Esq., of Louisville, Kentucky, be, and he is hereby, appointed as special examiner under the amended sixty-seventh rule in equity of the Supreme Court of the United States, to take proofs herein and report the same to the court.

62 The replications to the answers of complainants to the bill in said entitled cause, are in the words and figures following, to wit:

Replication to Answer of Charles U. Shreeve et al.

In Circuit Court of the United States for Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee, &c.,
vs } In Chancery.
CHARLES U. SHREVE *et al.*

The replication of Thaddeus W. Spindle, assignee in bankruptcy of Chares U. Shreve, complainant, to the answer of Charles U. Shreve et al., defendants.

This repliant, reserving unto himself all manner of advantage of exception that may be taken to the insufficiencies of said answer, for replication thereto, saith, that he will aver and prove his bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true, all which matters and things this repliant is and

63 will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GWYNN GARNETT,
Compl't's Sol'r.

Replication to Answer of Thomas T. Shreve.

In Circuit Court of the United States for Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee, &c.,
vs.
CHARLES U. SHREVE, *et al.*
} In Chancery.

The replication of Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, complainant, to the answer of Thomas T. Shreve, one of said defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and 64 things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GWYNN GARNETT,
Compl't's Sol'r.

Replication to Answer of Infant Defendants.

In Circuit Court of the United States for Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee, &c.,
vs.
CHARLES U. SHREVE, *et al.*
} In Chancery.

The replication of Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, complainant, to the answer of Charles U. Shreve, Jr., and L. L. Shreve, infant defendants, by Charles A. Gregory, their guardian *ad litem.*

This repliant, reserving unto himself all manner of advantage of exceptions that may be taken to the insufficiencies of said answer, for replication thereto saith, that he will aver and prove his bill to be true, certain and sufficient in law to be answered unto, and that said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other

matter or thing whatsoever in said answer contained, mate-
65 rial or effectual in the law to be replied unto, confessed and
avoided, traversed or denied, is true, all which matter and
things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GWYNN GARNETT,
Compl't's Sol'r.

Afterwards, to wit, on the twenty-first day of August, A. D. 1879, in the record of the proceedings of said court in chancery, before the Hon. Thomas Drummond, circuit judge, in said entitled cause, appears the following entry, to wit:

THADDEUS W. SPINDLE, Assignee, &c.,
vs. } In Chancery.
CHARLES U. SHREVE *et al.*

On motion of complainant's solicitor, it is ordered that the above entitled cause be referred to Elijah B. Sherman, one of the Masters in chancery of this court, to take proofs, and to ascertain from the proofs so to be taken as well as from the depositions already taken, the value on the 9th day of July, A. D. 1877, of the life interest of Charles U. Shreve in and to the rents, issues, and profits of the
premises in the bill of complaint described; and said mas-
66 ter is ordered to report to this court his conclusions as to such
value.

Afterwards, to wit, on the eleventh day of September, A. D. 1879, came said Elijah B. Sherman, Esq., Master, etc., and filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee, etc.,
vs. } In Chancery.
CHARLES U. SHREVE *et al.*

To the Honorable the Judges of said Court.

This cause having been referred to the undersigned, as Master, by the order of the court, with directions to ascertain from proofs to be taken, and from the depositions then already taken, the value, on the 9th day of July, A. D. 1877, of the life interest of Charles U. Shreve in and to the rents, issues, and profits of the premises in the bill of complaint described, and to report to the court his conclusion in the premises.

He has, pursuant to said order been attended by the counsel for

the respective parties, and has examined the testimony which
67 had already been taken in said cause together with the de-
position of William D. Kerfoot taken upon this reference,
and herewith returned, and from such examination has reached the following conclusion :

The Master finds the value, on the 9th day of July, 1877, of the life interest of Charles U. Shreve in and to the rents, issues, and profits of the premises in the bill of complaint described, to have been eighteen thousand three hundred and sixty-eight and $\frac{10}{100}$ dollars ($18,368.10).

The method adopted by the Master in so ascertaining the value of said life interest was as follows:

The annual value of the rents, issues, and profits of said premises was estimated to be six (6) per cent. of the value of the premises, shown by the evidence to be forty-five thousand dollars ($45,000.00), this is somewhat in excess of the net rental on the 9th day of July, 1877 ($2,300.00), but considerably less than the net rental at the present time ($3,500.00).

The evidence shows that the age of Charles U. Shreve on the 9th day of July, 1877, was about fifty (50) years. Adopting the "Carlisle Tables" the expectation of life at that age is found to be twenty-one and $\frac{11}{100}$ (21.11) years, and the value of an annuity of $1.00 at 6 per cent., the rate of interest which the Master adopts is found by
said tables to be $10 $\frac{631}{1000}$. Hence the value of an annuity of
68 $2,700.00 at the age of fifty (50) years, is found to be twenty-
eight thousand seven hundred and three and $\frac{70}{100}$ dollars
($28,703.70). Which in the absence of any testimony regarding the health of said Charles U. Shreve, the Master would have found to have been the value of said life interest. But the testimony shows, in a vague way, that the health of said Charles U. Shreve had been considerably impaired by intemperance, such fact, as the Master understands the law, it was proper to consider as essentially modifying the expectation of life of said Shreve, and hence the value of his life interest.

The evidence scarcely affords sufficient data to warrant a definite conclusion as to the degree of such impairment of the health of said Shreve, and further testimony of a more specific character, would have greatly aided the Master in arriving at a satisfactory result.

The Master, however, is of the opinion under the evidence, that a deduction of one-half ($\frac{1}{2}$) from the expectation of life, should be made in this case. Said tables show that at the age of (67) sixty-seven, the expectation of life is ten and $\frac{75}{100}$ (10.75) years, or a fraction more than one-half of the expectation at the age of fifty (50.) The value of an annuity of $1.00 at the age of sixty-seven (67,) at 6 per cent. interest, is found to be $6 $\frac{803}{1000}$. Hence the value of an annuity of $2,700.00, is found to be $18,368.10, as hereinbefore stated.

E. B. SHERMAN, *Master, &c.*

69

[Endorsed.]

Filed Sept. 11, 1879.

W. H. BRADLEY, *Clerk.*

Afterwards, to wit: on the twelfth day of September, A. D. 1879, said defendants, by their solicitor, filed in said clerk's office, their exceptions to said master's report in said entitled cause, which said exceptions are in the words and figures following, to wit:

Exceptions to Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

SPINDLE, Assignee,
vs.
CHAS. U. SHREVE *et al.*
In Chancery. Gen. No. 16202.
Term No. 1428.

And now come the said defendants by their solicitor and guardian *ad litem*, and say that they except to the Master's report in said cause, filed herein on the 11th day of September, 1879, and for cause of exception say that the Master has erred in using the "Carlisle Tables" to get at the expectation of life of Charles U. Shreve; that such tables are of no value in the case of a person whose health is very much impaired by intemperance or excesses of life; hence that there is no proper evidence before the Master on which
70 he could form a legal or reliable estimate of the expectation of life of Charles U. Shreve.

2. That a net annual rental of 6 per cent. on the estimated value of real estate, taken as a fee for a long series of years, is greatly in excess of the returns of such real estate as in question.

3. That the length of life of said Charles U. Shreve is estimated at too great number of years, even considering the abatement made by the master on account of ill-health.

Ill-health being shown, it is incumbent on complainant to show by medical testimony of proper experts the condition of the said Shreve.

4. That the value of the life interest of said Shreve is not a proper subject of inquiry in this case.

For which exceptions and other errors defendants move that said report not be confirmed.

CHAS. A. GREGORY,
Sol'r for Def'ts & Guardian ad litem.

[Endorsed.]

Filed Sept. 12th, 1879.

WM. H. BRADLEY, *Cl'k.*

Afterwards, to wit, on the twenty-seventh day of September, in July term, A. D. 1880, of said court in the record of the proceedings thereof in chancery in said entitled cause, before the Hon. Thomas Drummond, circuit judge, appears the following entry, to wit:

71 THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve.
vs.
CHARLES U. SHREVE, JOHN M. SHREVE, THOMAS T. Shreve, A. L. Corey, J. W. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan and L. L. Shreve.
} In Chancery.

This case having been heretofore argued by counsel for both parties to the same upon the bill and answers and proofs therein, and the same having been considered by the court, it is hereby ordered by the court that the bill of complaint be dismissed at the complainant's costs, and that execution issue herein therefor.

Afterwards, to wit, on the twenty-seventh day of September A. D. 1880, there was filed in said clerk's office the certificate of evidence in said entitled cause, which said certificate of evidence is in the words and figures following, to wit:

Certificate of Evidence.

UNITED STATES OF AMERICA,
Northern District of Illinois.

72 In the Circuit Court of the United States for the Northern District of Illinois.

THADDEUS SPINDLE, Assignee in Bankruptcy of Charles U. Shreve,
vs.
CHARLES U. SHREVE *et al.*
} In Chancery.

Be it remembered, that on the hearing of the above-entitled cause, on the 12th day of November, 1879, before the Hon. Thomas Drummond, judge of the United States circuit court for the northern district of Illinois, the complainant, to maintain the issues in said cause on his part, introduced the following testimony and documentary evidence:

A certified copy of the will of Thomas T. Shreve, deceased, in the words and figures of Exhibit A, attached to the bill of complaint, together with a copy of the record of the probate of said will, showing the probate thereof as stated in said bill.

A certified copy of the record of the cause in the Louisville chancery court, wherein David P. Faulds, as executor of said Thomas T. Shreve, was complainant, and the widow and heirs-at-law of said Thomas T. Shreve and Speed S. Goodloe were defend-

ants, showing an order in said cause, as stated in said bill, appointing John M. Shreve as trustee for said Charles U. Shreve, and
73 at the request of said Charles to receive a conveyance of the premises in question and other property, to be held in trust for said Charles under the provisions of said will.

A deed from David P. Faulds, as executor, to said John M. Shreve, trustee, in the words and figures of Exhibit B attached to said bill.

A certified copy of a deed from Eli H. Murray, register in bankruptcy of the United States district court for the district of Kentucky, conveying to said Spindle, as assignee in bankruptcy of said Charles U. Shreve, the estate and effects of said Charles U. Shreve in manner and form required by the laws of Congress; the said deed being dated October 9th, 1878, and it being proved that said Charles U. Shreve filed his petition in bankruptcy in said district court of the United States for the district of Kentucky on the 31st day of August, 1878.

Deposition of Charles U. Shreve and deed from C. U. Shreve to T. T. Shreve, dated July 9th, 1877, attached to said deposition, which are in the words and figures following, to wit:

CHARLES U. SHREVE was sworn for complainant, and testi-
74 fied: I am the defendant, Charles U. Shreve; am 50 years of age; my wife's name is Sallie B. Shreve; my daughter Sallie T., is about 25 years old; my daughter Lizzie E. Trabue, about 25 years; she is the wife of William. Trabue, and lives with her father-in-law; my son Thomas T. Shreve, is about 22 years old; my daughter Eveline E., is about 20 years; my daughter Minnie E., about 18; my son Charles U. Jr., about 16; my son L. L. Shreve, about 12 years; they all live with me except Lizzie; my son Thomas T., lives with me but is self supporting; the deed from me to Thomas T. Shreve, dated July 8, 1877, was executed by me that day and I make it a part of my answer. The deed referred to is attached to the deposition, but is not under seal, and recites a consideration of $500, stated to be evidenced by two notes of $250 each, executed by said Thomas T. Shreve, and purports to convey to Thomas T. Shreve all the interest of said Charles U. Shreve in the premises in controversy; and it further recites that said property was devised in trust by T. T. Shreve, deceased, for the trustee to pay taxes, etc., and balance to Charles U. Shreve for the purpose of maintaining his family, and that it is the intent of said deed to sell to said Thomas T. Shreve the whole interest in said rents and profits which said Charles U. Shreve is entitled to individually under said will, and no more.

75 Said Thomas T. is my son; his business was then a clerk in Dun & Co.'s mercantile agency, but I do not know what his salary was. I do not think he depended on my income for support up to July 9, 1877; he could have supported himself; he was living with me without charge; he had no property at that time that I know of except the remainder in the trust estate under T. T.

Shreve's will; his attorney paid the $500 consideration to me; my attorney was his attorney; I understood he got the money by making his note with Mrs. Belle S. Shreve as security. (Attention of witness is called to a certified copy of his schedule in bankruptcy, and says the debt therein referred to as contracted in 1878, was a renewal of a debt contracted two or three years before that time. The schedules which are attached to the deposition, show that all of his debts, amounting to about $30,000, were contracted prior to July 9, 1877.

Before July 9, 1887, a number of executions, aggregating a large amount, had been issued against me from the Louisville chancery and common pleas courts, and were returned "no property found." I considered myself insolvent July 9, 1877; before that time the net income I derived from the Chicago trust estate did not exceed $2,200 or $2,300 per annum. Before that date J. M. Shreve paid me the rent, and paid insurance, but I think did not keep 76 down the taxes; the income was more than enough to pay the taxes. After July 9, 1877, he paid the rent to T. T. Shreve and myself, as circumstances justified—at first, after sale, to T. T. Shreve, he paid the income to him; after that, T. T. Shreve's business required him to be absent for long periods of time, and he made me a power of attorney to receive the rents, which I have continued to do, except when he was here. T. T. Shreve brought a large portion of the money received to my house, and placed it in the hands of his sister, Sallie T. Shreve, who was then and is now housekeeper, and disbursing the money for that purpose, and at his request, Thomas and his sister have given me small sums of money, probably not exceeding $150 or $200 altogether, except when the house rent is to be paid, and then, as the lease is made in my name, I get the money from one of them and pay the rent; the other expenses I have nothing to do with; I pay my individual expenses; my clothing costs very little. The taxes in Chicago are about $700 behind; they are not paid because the income of the Chicago property is absolutely required for the uses of the family. All taxes due previous to July 9, 1877, being $1,700 to $2,000, have been paid from funds chargeable to the income to go to T. T. Shreve, as per agreement between him and me at the time of my deed to him. The improved property is insured for $10,000; J. M. Shreve is my uncle.

77 *Cross-examination.*

I made another deed to T. T. Shreve for my interest in that property in October or November, 1878, because the first deed was not under seal. The income of the trust property in Chicago is hardly adequate to support my family except under strict economy. None of my family except Thomas are earning or capable of earning anything. I have no business or means of earning a living. I have no part of the estate my father left me in fee simple. My creditors have subjected to their claims all my estate in Kentucky.

For two years past I have had no income from the trust property in Kentucky left me by my father. Neither I nor my family have any means of support except such as T. T. Shreve applies for that purpose. I presume T. T. Shreve applied a portion of the income to his own use; I don't know. Whatever money his sister needed for the household he supplied, as far as in his power, from this income. He used very little, if any, of the income money for his own purposes. I know it took all the money for the family.

Re-direct Examination.

The deed I made in November, 1878, was simply a deed of confirmation, without further consideration. I think I have received a liberal education, but only a partial education for the law;
78 never graduated at it. Not all of my children have so good an education as I could wish. The older ones are more favored in that respect than the younger.

Deed—Shreve to Shreve.

This indenture, made this 9th day of July, 1877, between Charles U. Shreve, of the city of Louisville, State of Kentucky, party of the first part, and Thomas T. Shreve, of said city and State, party of the second part, witnesseth, that for and in consideration of the sum of five hundred dollars, for the payment of which said second party has this day executed his two promissory notes for the sum of two hundred and fifty dollars each, payable and due in three and four months respectively to said first party, and bearing interest at the rate of eight per cent. per annum, and to secure the payment of which a lien is hereby retained on the property hereinafter conveyed, said first party hath bargained, sold, and conveyed, and by these presents doth bargain, sell, grant, convey, transfer, and assign unto said second party the entire interest of said first party in the following described property, situated in the city of Chicago, Illinois.

First. A lot with the improvements thereon on the west
79 side of South Clark street, being that part of lot eight (8), in block fifty-six (56), in the original town, commencing at a point forty-five (45) feet north of the southeast corner of said lot as the same was originally laid out, and twenty (20) feet north of the present southeast corner of said lot, thence north on the east line of said lot twenty-one and a half (21½) feet, thence westerly parallel with the south line to the west line of said lot, thence south twenty-one and a half (21½) feet, thence east to the beginning.

2nd. The property in said city of Chicago, called Shreve's Dearborn street water lot, known as sub-division lots Nos. one (1), two (2), three (3), four (4), five (5), six (6), and seven (7) of lot No. one (1) in block two (2) in the original town, with all the right, title, and interest of said party of the first part to the property lying between said sub-lots and the centre of Chicago river.

The above described property was devised in trust by T. T.

Shreve, deceased, for the trustee to pay first the taxes, insurance, and repairs out of the rents and profits of same, and to pay the balance into the hands of said party of the first part for the purpose of maintaining and supporting said first party and his family; and the intent and design of this conveyance and assignment is to
80 sell and transfer to said party of the second part for the consideration hereinbefore recited, the whole interest in the rents and profits of said property, which he, the said party of the first part is entitled to individually, under the will of said T. T. Shreve, deceased, and no more. To have and to hold the same unto said second party, and his heirs and assigns forever.

In witness whereof said first party has hereunto signed his name the day and year first above written.

C. U. SHREVE.

STATE OF KENTUCKY,
Jefferson County, City of Louisville. } *sct:*

Be it remembered that on this 10 day of July, 1877, in the city and county aforesaid, before me, Harry Stucky, a commissioner residing in said city, duly appointed a commissioner by the Governor of the State of Illinois to take acknowledgment and proof of the execution of deeds and other instruments in writing under seal or not, to be used and record in said State, and to take depositions, &c., personally appeared C. U. Shreve, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as having executed the same, and acknowledged
81 that he had signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and affixed my official seal as commissioner aforesaid, at my office, in Louisville, and State of Kentucky, this tenth day of July, A. D. 1877.

[SEAL.] HARRY STUCKY,
Commissioner for Illinois, in Louisville, Kentucky.

No. 142580. Filed for record July 13, 1877, at one o'clock p. m.
JAMES W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS,
County of Cook, } *ss:*

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 13th day of July, A. D. 1877, as document No. 142580, and recorded in Book 656 of Records, at page 554.

In testimony whereof I have hereunto set my hand and affixed my official seal at Chicago, this 13th day of July, A. D. 1881.

[SEAL.] JAS. W. BROCKWAY,
Recorder.

"It is hereby stipulated, this conveyance or document may be inserted in the transcript of the record for Supreme Ct. U. S., in place of the original of which this is copy."

JULY 13TH, 1881. L. M. SHREVE,
For Def't.

82 Deposition of Thaddeus W. Spindle, which is as follows, to wit:

I am the complainant; am 23 years old, and reside in Louisville, Ky. Before this suit was brought I made a demand on John M. Shreve for the trust property, and for the settlement of the accounts as trustee. He answered that it was his first knowledge of the matter, that he had not consulted his attorney, and would, of course, refuse to comply with the demand.

Deposition of W. D. Kerfoot and Master's Report, which said deposition is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve,
vs.
CHARLES U. SHREVE *et al.*
} In Chancery.

Testimony taken before E. B. Sherman, master in chancery of said court, Saturday, the 30th day of August, A. D. 1879. Present, Gwynn Garnett, Esq., solicitor for complainant, and Charles A. Gregory, Esq., solicitor for defendants.

William D. Kerfoot, a witness on behalf of the complainant, being first duly sworn, was examined-in-chief by Mr. Garnett, and deposes as follows:

83 Question. What is your name, residence, and occupation?

Answer. My name is William D. Kerfoot; residence, Chicago; occupation, real estate agent.

Q. How long have you been in the real estate business in Chicago?

A. Twenty years.

Q. Are you acquainted with the property described in the bill of complaint in this case, as follows: The lot and improvements thereon on the west side of South Clark street, being that part of lot 8, in block 56, in the original town, commencing at a point 45 feet north of the southeast corner of said lot, the same as originally laid out, and 20 feet north of the present southeast corner of said lot; thence running north on the east line of said lot 20½ feet; thence westerly parallel with the south line of said lot to the west line of said lot; thence south 20½ feet; thence east to beginning. Also another piece known as the property in said city of Chicago called Shreve's Dearborn Street Water Lot, known as subdivision lots numbers 1, 2, 3, 4, 5, 6, and 7 of lot 1, in block 2, in the original town, with all the right, title, and interest of the said Charles U. Shreve to the property lying between said sub-lots and the center of the Chicago river?

A. I am.

84 Q. Where is that property situated?

A. One piece on the west side of South Clark street, 20 feet north of Madison, and the second piece on the northwest corner of the main branch of the Chicago river and North Dearborn street.

Q. How long have you known that property?

A. Since 1868.

Q. Have you had charge of it for the collection of rents and payment of taxes; if so, for how long?

A. Ever since the purchase by Thomas T. Shreve, Sen'r, about 1868.

Q. On July 9th, 1877, what in your opinion was the annual rental value of the property on Clark street that you have described?

A. About $3,300 per year.

Q. What was the annual rental value of that piece of property at that time, after paying all taxes, insurance, repairs, and other charges?

A. About $2,300.

Q. What in your opinion was the annual rental value at that time time of the property situated on the main branch of the Chicago River and Dearborn street?

A. It had no rental value; it could not be rented.

Q. Had it ever been rented before that time?

A. Not since the fire of 1871.

Q. If it ever was rented, state when it was rented, and for what sum per year?

85 A. It was rented with the buildings on it prior to the fire of 1871, at $4,500 per year.

Q. What was the character of the buildings at that time?

A. The buildings consisted of a large frame warehouse.

Q. Has the lot been rented since this suit was commenced?

A. It has since been rented for $1,000 a year.

Q. The naked lot was rented for $1,000 a year, do you mean?

A. Yes.

Q. For what term of years?

A. Five years from the first day of May, 1879.

Q. The tenant to pay all taxes and assessments?

A. No, sir; the tenant pays the taxes upon the improvements that might be placed upon the property.

Q. But the landlord to pay the taxes on the lot proper?

A. On the real estate; yes, sir.

Q. What are the taxes per annum on that property?

A. Between four and five hundred dollars. I can't tell exactly.

Q. What was the value of the Clark street property on July 9th, 1877?

($118\frac{3}{12}$) on the southside of Oak street, and extending back 156 feet and $\frac{1}{4}$ foot to the 20-feet alley, and having a less front on said alley, the west line of said $118\frac{3}{12}$ feet being parallel with Eighth street, and the east line being the 7th street plank road, part of the property in a deed from Sam. Hyman to T. T. Shreve, 19th Sept., 1865, Book 123, page 639.

Also a lot in the city of Louisville aforesaid, part of fractional twenty-acre lot No. 10, in Campbell's addition, fronting one hun-
dred and one feet nine inches on the east side of Third street,
92 one hundred feet wide, and extending back 180 feet to the
20-feet alley, and fronting on said alley ninety-eight feet, and
bounded on the south by Oak street.

Also another lot in said city of Louisville, fronting one hundred and twenty-three feet and seven inches ($123\frac{7}{12}$) on the west side of First street, by 200 feet to the 20-feet alley, and fronting on said alley $127\frac{9}{12}$ feet, and bounded on the south by Oak street. Also, another lot in said city of Louisville, fronting one hundred and fifty-two feet and three inches on the east side of Second street, by 200 feet deep to the 20-feet alley, and fronting on said alley $148\frac{2}{12}$ feet, and bounded on the south by Oak street. Said three last mentioned parcels being part of the property conveyed by Theo. A. Hurley and wife to T. T. Shreve, June 6th, 1854, Book No. 90, page 184.

All the foregoing property being the property formerly belonging to T. T. Shreve, deceased, and which, under the division and allotment provided for in his last will, was conveyed by his executor to said party of the first part, recorded in Book 592 of Deeds, page 436, in recorder's office of said Cook county, Illinois, and in Deed Book No. 150, page 200, &c., in the clerk's office of the Jefferson county court.

Also a tract of land in said city of Louisville, beginning at the
southwest corner of Brook and C streets, thence south-
93 wardly with the west line of Brook street thirty-six feet,
more or less, to the line common to J. M. Bryant, and said
first party, thence with said common line northwestwardly to the south line of C street, thence eastwardly with the south line of C street to the beginning.

And another tract on the west side of a 20-feet alley one hundred and fifty-four feet south of B street, and 200 feet east of First street, thence southwardly with the west line of said alley one hundred and thirty feet, more or less, to the line common to said Bryant and said first party, thence with said common line northwestwardly to a corner of the land conveyed by said first party to said Bryant, at a point 154 feet south of B street, thence eastwardly parallel with B street 127 feet, more or less, to the beginning, conveyed by J. M. Bryant and wife to said first party Jan'y 2d, 1873, recorded in Deed Book No. 169, page 17.

Also a certain tract of land in said city of Louisville, situated on the south side of Chestnut street, between 15th and 16th streets, commencing one hundred and five feet (105) east of the southeast

corner of Chestnut and 16th streets, running thence eastwardly fifty-two and one-half feet (52½), thence southwardly two hundred feet (200) to a twenty-feet alley, thence westwardly fifty-two and one half feet (52½), thence northwardly two hundred feet (200)
to Chestnut street, conveyed by J. M. Shreve to said C. U.
94 Shreve 1st Oct., 1872, recorded in Deed Book No. 166, page
256, in said Jefferson county, clerk's office.

Also a lot in said city of Louisville, on the west side of Fourth or Wall street, between Main and Water streets, having a frontage of twenty-five feet on Fourth street, running back westwardly, same width, one hundred and twenty feet (120) to an alley, conveyed by Louisa A. Kemper and Andrew C. Kemper to said party of the first part, April 25th, 1873, and recorded in Deed Book No. 170, page 583, in said Jefferson county clerk's office.

Also a lot of land on the southwest corner of Brook and Main streets, and another lot on the south side of Main street (both in said city), at a point west of the intersection of Main and Brook streets, and both lots convoyed to said first party by Robert Cochran, commissioner of Louisville chancery court, on 22d day of December, 1875, and recorded in Deed Book 196, page 214, in said Jefferson county clerk's office.

But as regards that last-mentioned property, so conveyed by said Cochran, said party of the first part holds the same nominally in his own name, and has mortgaged the same to Joseph Werne, but said mortgage was made to raise money to pay a part of the debt
owing by J. Fry Lawrence to said first party, and said first
95 party has no further interest in said property than to have it
secure the loan from said Werne, and a balance still due
from said Lawrence to said first party, to be hereinafter mentioned, and when said Werne and said balance shall have been paid, said party of the first part, but for this conveyance, would be, in honor and by agreement, bound to reconvey said property to said Lawrence; and therefore the same is hereby conveyed to said second party, burdened with said agreement, as said property is in truth the property of said Lawrence, subject to said debt to Werne and to the payment of said balance to said first party.

Also 618 shares in the Eureka Coal and Coke Company, Washington, Indiana; 50 shares in the St. Louis Cement Company; 448 shares in the Asphalt Paving and Mining Company, Louisville, Ky.; 10 shares in Louisville Agricultural Company; 6 shares in the Gault House Company; 6 shares [in the] Texas Land Association (Mercer claim); 318 shares in the Southern Pacific Railroad Company; 1 share in the Paroquet Springs Company, Bullitt county; 10 shares in Grand Central Exposition, Louisville; 15 shares in Davis Gold and Silver Mining Co., California; 12 shares in the Louisville Industrial Exposition Company; 125 shares in Boyd's Creek Coal Oil Company, Louisville; any balance in
the hands of D. P. Faulds, executor of T. T. Shreve,
96 which may, on final settlement by said executor, be

due said first party, as one of the devisees of said T. T. Shreve, deceased; amount due said first party by L. M. Shreve, of Chicago, $447; amount due same by J. Fry Lawrence, one note of date, amount $400; and one note of date, amount $50; and $100, advanced by said first party for said Lawrence to Mrs. Green; the sum of about $225 due said first party from the St. Louis Cement Co.; $200 due same from B. H. Allen; note of Birch and wife to same, $150; note of Buckley & Logan to same, $266; note of W. D. Turner to same, $114.51; account debt from A. W. Hahman to same, $100; secured by mortgage on personalty, 1 iron safe, 1 buggy; to have and to hold unto said party of the second part and his heirs, assigns, and successors for the following purposes and for none other:

First. Said party of the second part shall immediately proceed in such manner as to him shall seem best, either by public or private sale, or by instituting suit in the Louisville chancery court, to sell and have sold all the foregoing property and any and all other property belonging to said first party, not exempt from execution, which by any oversight may have been omitted in the following
list, so far as can be done, and shall, out of the money
97 realized from said sale, pay first the debts, which are secured
by liens on the property sold, and then the unsecured debts
pro rata, until all the indebtedness of the said party of the first part shall be paid in full, or until all the property aforesaid shall have been sold, the lien debts first to be paid out of the money realized from a sale of the property on which the liens are in accordance with their priority, and the surplus, if any, from such sales to go to the general fund for the payment of the unsecured creditors.

If after all the debts shall have been paid there shall be any property unsold, or any money on hand, said property or money shall be returned by said trustee to said party of the first part; it being the object and intent of this conveyance to transfer to said second party all the property belonging to said first party not exempt from execution for the benefit of all the creditors of said first party.

And said trustee shall in all respects act with regard to said property and to said indebtedness with as full power and authority as said first party would have, but for this conveyance. Said second party shall be allowed a fair, reasonable compensation for his services under this deed, and shall employ counsel to devise and
98 assist him, and if necessary to prosecute said suit in the
chancery court, said compensation and said counsel fee to be first paid out of said general fund.

In witness whereof, said party of the first part has hereunto signed his name, the day and year first above written.

C. U. SHREVE.

I hereby accept the trusts mentioned above and agree to execute the same. Louisville, Ky., June 20th, 1876.

J. M. SHREVE.

I, Ch. M. Thurston, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing deed, together with the endorsement thereon, was produced to me in my office, and said deed was acknowledged and delivered by C. U. Shreve, a party thereto, to be his act and deed, and the endorsement thereon was acknowledged and delivered by J. M. Shreve, a party thereto to his act and deed, and that I have recorded said deed, the endorsement thereon and this certificate in my said office.

Witness my hand this 20th day of June, 1876.

CH. M. THURSTON, *Clerk.*

STATE OF KENTUCKY, *Jefferson County.*

99 I, William E. Loran, present clerk of the Jefferson county court, at Louisville, Kentucky, and by law keeper of the records of deeds to real property in said county, do hereby certify that the foregoing is a true and correct copy of the record of a deed from C. U. Shreve to J. M. Shreve, and of the certificate of acknowledgment thereto, which deed is recorded in the books of my said office in Book No. 201, at pages 137 to 142 inclusive.

Witness my hand and official seal this 25th day of August, 1879.

[SEAL OF JEFF. CO. C'T, KY.] WM. E. LORAN,
Cl'k Jeff. Co. C't, Ky.

I, William B. Hoke, judge of the Jefferson county court, do hereby certify that William E. Loran, whose name is subscribed to the above certificate, is by law the keeper of records of deeds in and for said county, and that he is by law authorized to make and to certify copies from said records, and that his above attestation is in due form of law.

Witness my hand this 26th day of August, 1879.

W. B. HOKE,
Judge Jefferson County Court.

I, William E. Loran, clerk of the Jefferson county court, do hereby certify that William B. Hoke, whose name is subscribed above as judge of the Jefferson county court, is duly commissioned and qualified as such.

Witness my hand and the seal of my office this August 26, 1879.

[SEAL OF JEFF. CO. C'T, KY.] WM. E. LORAN,
C'lk Jeff. Co. C't, Ky.

100 Also Section twenty-third of Article 1, of volume 2, of Stanton's Revised Statutes of Kentucky, page 230, which is as follows:

"Estates of every kind held or possessed in trust shall be subject to the debts and charges of the persons to whose use or for whose benefit they shall be respectively held or possessed, as they would be subject to if those persons owned the like interest in the property held or possessed as they own or shall own in the use or trust thereof."

And thereupon the said defendants, Charles U. Shreve, John M. Shreve, J. W Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, and Mary E. Shreve to sustain the issues on their part introduced the following testimony and documentary evidence, to wit:

Confirmatory deed from Charles U. Shreve to Thomas T. Shreve for the premises in question, dated November 2nd, 1878, and being under the seal of said Charles U. Shreve.

101 Depositions of John M. Shreve, T. T. Shreve, and Belle S. Shreve, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss:*
District of Kentucky, City of Louisville, }

Be it remembered that on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, I, Jno. C. Wharton, a special examiner duly appointed by the circuit court of the United States for the northern district of Illinois, by order of said court of date June 13th, 1879, and duly commissioned as such, with power and authority to take the depositions of witnesses herein, and report the same to said court, did call and cause to be and personally appear before me at my office, 180 West Jefferson street, in the city of Louisville, and State aforesaid, John M. Shreve, T. T. Shreve, and Belle Sheriden Shreve to testify and the truth to say, on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the northern district of Illinois, wherein Thaddeus W. Spindle, assignee of Charles U. Shreve, is complainant, and Charles U. Shreve and others are defendants.

102 And the said John M. Shreve, T. T. Shreve, and Belle Sheriden Shreve, being of lawful age and of sound mind, and having been by me first cautioned and sworn to testify the whole truth and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said Jno. M. Shreve, T. T. Shreve, and Belle Sheriden Shreve, and they did thereupon depose, testify, and say as set forth in their depositions hereto annexed.

Met the twenty-sixth day of June, 1879, at 10 o'clock a. m., both complainant and defendant being present by counsel, and took the the deposition of Charles U. Shreve in behalf of the complainant, in the suit of Thaddeus W. Spindle, assignee of Charles W. Shreve, against Charles U. Shreve and others, no witnesses for the defendant being present, after which, by agreement of counsel, adjourned to June 28, 1879, at 11 o'clock a. m.

JNO. C. WHARTON,
Special Examiner.

Adjourned, by agreement of counsel, to June 28th, 1879, at 11 o'clock.

JNO. C. WHARTON,
Special Examiner herein.

Met pursuant to adjournment, the 28th day of June, 1879, at 11 o'clock a. m., both complainant and defendant being present by counsel, and the complainant's witness not being present, commenced taking the deposition of John M. Shreve in behalf of the defendant in the suit of Thaddeus W. Spindle, assignee of C. U. Shreve, against C. U. Shreve and others.

JNO. C. WHARTON,
Special Examiner.

103 Question 1. State your name, age and residence?

Answer 1. My name is Jno. M. Shreve; age, sixty-eight; and residence, Louisville, Ky.

Q. 2. Are you the trustee under the will of T. T. Shreve, deceased?

A. 2. I am the trustee under the will of T. T. Shreve, deceased, for C. U. Shreve.

Q. 3. How long have you acted in said capacity?

A. 3. Since the 25th day of June, 1870.

Q. 4. What was the net annual income of the two pieces of trust property in Chicago, Ill., the same now in controversy, for the year 1877?

A. 4. About twenty-two hundred dollars.

Q. 5. Does that estimate exclude the taxes on same?

A. 5. [W]That was the net amount after paying taxes and insurance.

Q. 6. Is that sum sufficient for the support of C. U. Shreve and family?

A. 6. It affords a comfortable living, but far short of what they have been formerly accustomed to.

Q. 7. Has the said Charles U. Shreve any business or means of support?

A. 7. He has no business, and no means of support other than what he receives from the trust estate.

Q. 8. Has he any property of any kind?

A. 8. None that I know of.

Q. 9. Has every thing he possessed been levied on and sold by his creditors?

A. 9. Everything.

Q. 10. What were the habits of the said Chas. U. Shreve during the lifetime of his father, T. T. Shreve?

A. 10. His habits were not good, so far as temperance was
104 concerned, for several years previous to the death of his father.

(Question and answer excepted to by counsel for complainant.)

Q. 11. Have his habits for intemperance improved any since his father's death ?

A. 11. His habits were rather worse for several years after his father's death, and if there has been any improvement it has been within the last twelve months.

(Question and answer excepted to by counsel for complainant.)

Q. 12. Is not his constitution impaired, and has not his health failed him during the past twelve months, superinduced by intemperance ?

A. 12. I think it has been impaired very much within the last two years, from intemperance.

Q. 13. State the net annual income of said trust estate in February, 1879, when complainant's bill was filed in this cause ?

A. 13. It was about twenty-two hundred dollars.

Q. 14. About what time were you notified of the sale of said trust estate from Charles U. Shreve to the defendant, T. T. Shreve ?

A. 14. I was notified of the sale about the 10th or 12th day of July, 1877.

Q. 15. To whom have you paid the rents of said trust estate from and since said date, and whose receipts have you demanded in settlement of your accounts as trustee ?

A. 15. I paid them for some months to T. T. Shreve in person,
after that on several occasions, I paid to C. U. Shreve, who pre-
sented a power of att'y from T. T. Shreve to do so, whenever,
105 however, T. T. Shreve was in the city, I required a receipt
from him.

Cross-examined by Counsel for Complainant.

Question 1. Did you have any conversation with T. W. Spindle, assignee in bankruptcy of C. U. Shreve, the complainant herein, concerning the income from the Chicago trust estate, and if so, state when, and the substance of the conversation.

Answer 1. T. W. Spindle wrote me a note saying he wanted to see me on special business, at his office at once. I called accordingly, and he propounded several questions to me in regard to the estate, which I answered. I asked him what object he had in *answering* these questions. I do not recollect his reply exactly, but I was satisfied from the inquiries, that his object was to obtain information from me to suit his own purposes, and I told him that I would not have come if I had known his object, as he was a young man and I was an old one, and that I thought he should have come to me. I do not recollect that in my answers to his questions that I gave him any information in regard to the trust estate in Chicago; but I do not recollect exactly what I did say.

A. 2. Did he not in that conversation lay claim to the net income of the estate as assignee ?

A. 2. I think he did.

Q. 3. Did he not demand from you that you should recognize these claims in future and what did you answer?

A. 3. I was a little irritated and do not remember exactly what he said or what I answered; I do remember that I told him
106 I would hold them as trustee till they were taken out of my hands by the action of the courts.

Q. 4. Did you not sometime after July 10, 1879, pay the net income to C. U. Shreve in person, taking the receipt therefor from T. T. Shreve?

A. 4. No; I do not think I ever did that.

Q. 5. How large is the salary of T. T. Shreve which he receives from Dunn & Co. at present?

A. 5. I do not know.

Q. 6. From what source came the money with which T. T. Shreve took up the two notes in bank which he had given to C. U. Shreve in payment for his life estate?

A. 6. I do not know, only what I heard from T. T. Shreve, who informed me that the notes in bank were renewed from time to time, and I do not [know] whether they have ever been taken up as yet or not.

Q. 7. Are there any taxes in arrear on the Chicago property?

A. 7. Yes, there is some seven or eight hundred dollars; the taxes assessed on the wharf property are kept down by the tenant or the agent, Mr. Kerfoot, who collects the rent; the taxes in arrear are the taxes assessed against the South Clark street property in 1878 or 1879.

Adjourned by agreement of counsel to June 30, 1879, at 10 a. m.

JNO. C. WHARTON,
Special Examiner.

Met this 30th day of June, 1879, at 10 o'clock a. m., pursuant to adjournment, both complainant and defendants being being present by counsel, and resumed taking the deposition of Jno. M. Shreve, witness for the defendants.

JNO. C. WHARTON,
Special Examiner.

107 A. 7. (Continuation of answer seven.) After examining my books I find that the taxes originally due for 1877 is five hundred and fifty-two dollars, the penalties and costs on which I do not know, the property has been sold for the taxes for that year. The taxes for 1878, amounting to about five hundred dollars, besides costs and penalties, are also due and unpaid. The taxes for the year 1877 and 1878 are due and unpaid. The insurance on the property is all paid, and the property is in good repair. The property is rented from year to year, and the rents paid by the months; the rents are paid about as promptly as rents generally are.

Q. 8. Please state how many stories the house on Clark street has, by whom each story is occupied, and at what rent?

A. 8. The building has a basement and four stories, J. P. Brewster rents the basement and first story for two hundred and fifty dollars a month, the second, third, and fourth stories, with the exception of the rear room in the second story, were all rented by Dr. Akin for forty-six dollars a month. The rear room on the second story floor is occupied by L. M. Shreve, who pays for the room by legal advice and services.

The wharf property has not rented for anything since the Chicago fire, except occasionally when parties would unload coal or something of the kind on it, and then when the agent would catch them he would make them pay. The first of May, or the first of June, 1879, I leased it for eighty-two dollars a month to a transportation Co., the name of which I do not recollect. It is rented for three years, with the right to put up such improvements as they wished it, the company, paying the insurance and taxes on the 108 buildings, and I the taxes on the ground; at the end of the three years the company to have the property, or I to take it at an appraised value.

Q. 9. How much did you pay for repairs on the South Clark street house during 1878, and how much during 1877?

A. 9. I paid about two hundred and fifty dollars in 1878, but less than that in 1877, but I do not recollect how much in that year.

Q. 10. What is the average expense for repairs and alterations on that house?

A. 10. About one hundred and fifty dollars a year.

Q. 11. Do you employ an agent for collecting the rents from the South Clark street house; if so, how much commission do you pay him?

A. 11. I employ an agent and pay him a regular commission of two and one-half per cent., allowing him extra when there is extra services performed by him.

Q. 12. How much commission do you charge yourself for your trouble as trustee?

A. 12. Two and one half per cent.

Re-direct examination by counsel for defendant:

Question 1. State why the taxes on said property have not been paid for the years 1877 and 1878.

Answer 1. Because the money was needed by Chas. U. Shreve and his family, and for the further reason that a large portion of the income was need to reduce the taxes that had accumulated previous to the year 1877.

Q. 2. What were the net rents of said trust property in Chicago at the institution of this suit, in February, 1879?

109 A. 2. They were about twenty-five hundred dollars.

Q. 2. How have the rents increased since?

A. 3. They have increased by the lease of the wharf property on Dearborn st.

Q. 4. Have not the rents on the South Clark street property increased since said date by a reletting of the upper stories?

A. 4. Yes, the upper stories now rent for eighty-three dollars a month; previous to the suit they rented for only forty-six dollars a month.

Q. 5. At the time of the sale of C. U. Shreve to said T. T. Shreve, in July 1877, who was to pay the taxes on said property?

A. 5. The purchaser, I suppose.

Q. 6. Do you know?

A. 6. I told T. T. Shreve that I should pay the taxes out of the proceeds of the rent, and he told me of course he expected me to do so.

Q. 7. Have you any of the reports of the agent in Chicago since said sale to T. T. Shreve, and if so, in whose name is it made out, and in whose name as beneficiary has it been held since said date of sale?

A. 7. I have all of the statements of the agent made out monthly and quarterly in the name of J. M. Shreve, as attorney for T. T. Shreve.

Q. 8. Was the agent of said estate at Chicago notified at the time of the sale to said T. T. Shreve, that C. U. Shreve no longer had any interest therein?

A. 8. He was, and the conveyance of C. U. Shreve to T. T. Shreve was sent to the agent to be placed on record.

Q. 9. Is not C. U. Shreve now, and has he not for several years last past, been indebted to you in — thousands of dollars?

110 A. 9. C. U. Shreve owes me about six thousand dollars.

Q. 10. Are you liable on his paper for any amount in addition thereto?

A. 10. Yes; for some ten or twelve thousand dollars.

Q. 11. Was any portion of your property sold under execution or judgment of court to pay said former amount of $6,000?

A. 11. Yes, a house and lot on Fourth street was sold under execution?

Q. 12. Did you sell any property besides that to pay your indorsements for said C. U. Shreve?

A. 12. Yes.

Q. 13. What are the full amounts of your payments so far as his endorser or security?

A. 13. It amounts to some fifteen or sixteen thousand dollars.

Re-cross-examination by counsel for complainant:

Q. 1. How much are you at present out of pocket altogether on account of money advanced to C. U. Shreve, and on account of money paid as endorser or security for him?

A. 1. About six thousand dollars; I did not understand the last question by counsel for defendant; I intended to say, in answer to that question, that the whole amount of my liabilities as endorser and security for C. U. Shreve, was between fifteen and sixteen thousand dollars, of which I have paid about six thousand dollars.

J. M. SHREVE.
JNO. C. WHARTON,
Special Examiner.

Adjourned, by agreement of counsel, to July 2d, 1879, at 3 o'clock p. m.

J. C. WHARTON,
Special Examiner.

111 Met the 2d day of July, 1879, at 3 o'clock, p. m., pursuant to adjournment, both complainant and defendant being present by counsel, and the witness not appearing, adjourned, by agreement of counsel, to July 3d, 1879, at 5 o'clock p. m.

JNO. C. WHARTON,
Special Examiner.

Met the 3d day of July, A. D. 1879, at 5 o'clock p. m. pursuant to adjournment, both complainant and defendant being present by counsel, and took the deposition of Mrs. B. S. Shreve.

JNO. C. WHARTON,
Special Examiner.

Question 1. What is your name and residence, and where did you live in 1877?

Answer 1. My name is Belle Sheriden Shreve, and my residence is Louisville, Ky., and was in 1877.

Q. 2. Did you know T. T. Shreve, a defendant in this cause, and if so, how long had you known him in 1877?

A. 2. I have known him ever since he was three or four years of age.

Q. 3. Did he apply to you on or about the 9th day of July, 1877, to become his surety upon any note or notes; and if so, state the dates and amounts thereof so far as you recollect, and the circumstances under which said notes were executed.

A. 3. Yes; on the 9th day of July, 1877, he asked me to lend him five hundred dollars for his own use, and I not having the money, and wishing to aid him, told him I would lend him my name on joint notes with D. P. Faulds, and he could make notes in the Bank of Ky. There was two notes of $250.00 each, the first payable 90 days after date, which he paid at maturity, the
112 second note at 120 days, when it came due he paid $125.00 on it, and renewed the remaining $125.00, I think for four months; I would not be certain without looking at my books, but I know it was paid at maturity.

Q. 4. Did he explain to you at the time he solicited your aid for what purpose he wanted the money?

A. 4. He simply told me he wanted to buy his father's life interest in the trust property in Chicago. He said to secure me if I would let him have the money he would give me a mortgage on his remainder interest in the property in Ky., and the Chicago property, which mortgage he executed to secure me.

Cross-examined by counsel for complainant:

Question 1. Are you not the widow of T. T. Shreve, the father of Charles U. Shreve and grand-father of T. T. Shreve, two of the defendants in this suit?

Answer 1. Yes.

Q. 2. Do you know where T. T. Shreve your step-grandson *took* the money with which to pay the notes mentioned by you? If so, state the source?

A. 2. I do not.

BELLE S. SHREVE,
JNO. C. WHARTON,
Special Examiner.

Adjourned by agreement of counsel to July 5, 1879, at 11 o'clock a. m.

JNO. C. WHARTON,
Special Examiner.

Met July 5, 1879, at 11 o'clock a. m. pursuant to adjournment, both complainant and defendant being present by counsel, and took the deposition of T. T. Shreve witness in behalf of the defendants.

JNO. C. WHARTON,
Special Examiner.

113 *Deposition of T. T. Shreve.*

Question 1. State your name, age, residence, and vocation.

Answer 1. My name is T. T. Shreve; age, twenty-four November next; I reside in Louisville, Ky., and clerk for R. G. Dun & Co.

Q. 2. What was your age the 9th day of July, 1877?

A. 2. I was in my twenty-second year.

Q. 3. Are you the son of your co-defendant, Charles U. Shreve?

A. 3. I am.

Q. 4. Did you buy the interest of the said Charles U. Shreve in his trust estate in Chicago, Illinois, the same interest now in controversy in this cause; and if so, state when you purchased said interest and what was the consideration?

A. 4. I bought the said interest for the consideration of five hundred dollars cash, and was to pay $1,800 or $2,000 taxes due on the property. I made the purchase the 9th day of July, 1877.

(Counsel for complainant objected to so much of the foregoing answer as contradicts the terms in the deed.)

Q. 5. How did you raise said money which was to be paid cash?

A. 5. I raised it in bank by giving two notes for $250 each to the bank of Ky., with Mrs. Belle S. Shreve as surety on three and four months time. The first note I paid at maturity, the second note I paid $125 on at maturity, and gave a new note for $125 at

114 sixty days, which I paid at maturity. Mrs. Belle S. Shreve was on the last note also.

Q. 6. How much cash did you raise on said notes on or about the 9th day of July, 1877, in said bank, and what did you do with the same?

A. 6. I think there was five hundred dollars raised, and that it was given to my att'y to pay to C. U. Shreve.

Q. 7. Do you know that said C. U. Shreve received said sum at said time?

A. 7. I do.

Q. 8. Who has received the rents and profits of said trust estate in Chicago, Illinois, from and since said date of July 9th, 1877?

A. 8. I, my uncle, J. M. Shreve, has received them as trustee for me.

Q. 9. Has the said Charles U. Shreve any business or any means of support?

A. 9. None whatever that I know of.

Q. 10. Who has contributed to the support of his family for two years last past?

A. 10. I have.

Q. 11. What has become of his property in Kentucky?

A. 11. It has been all sold to satisfy debts.

Q. 12. Did you know his pecuniary condition on the 9th day of July, 1877?

A. 12. I knew he was embarrassed, but I did not know the extent of his embarrassment. He talked very little to me about his business.

Q. 13. Has he ever at any time prior to said date, or since,
115 communicated to you any thing about his business complications?

A. 13. Only in a general way, and very seldom at that.

Q. 14. From and since your purchase of said trust estate, how have you appropriated the proceeds thereof?

A. 14. To the support of our family. I mean my father's family.

Q. 15. Are you a single man?

A. 15. I am.

Q. 16. With whom do you live?

A. 16. With my father.

Q. 17. Is the income of said trust estate enough to support your father's family?

A. 17. It is hardly adequate.

Q. 18. In the past two years have you had to contribute from your salary to their support in addition to the income arising from said trust estate?

A. 18. I have contributed between six and eight hundred dollars to their support.

Q. 19. Has your father been compelled to pawn anything in addition to your assistance as aforesaid in order to pay the expenses of said family?

Answer 19. Yes; he has pawned a gun and a diamond ring of my mother's by her consent, these I know of.

Q. 20. At the time of his sale of said trust property, or before or since, has the said Charles U. Shreve ever had any agreement or contract with you as to your disposition of the same?

116 None whatever.

Cross-examination by Counsel for Complainant.

Q. 1. How much was your monthly income in 1877?

A. 1. Between forty and fifty dollars a month.

Q. 2. Did you in July, 1877, own any property, real or personal, except your remainder interest in the trust estate?

A. 2. None whatever, except some money; about one hundred and fifty dollars.

Q. 3. Where did you get the means with which you took up the notes, which you discounted in bank to get the $500, which you paid your father in July, 1877?

A. 3. Part of it came from my income in the trust estate. Nearly one-half I paid from money that I have saved out of my salary.

Q. 4. Did you agree with your father at the time of the sale that the taxes in arrear on the trust property should be paid out of its income in the future.

A. 4. I agreed in purchasing his interest to pay the taxes.

Q. 5. Did you make this agreement in these exact words, or was it simply understood that the taxes should be paid out of the future income, or do you recollect what other words were used exactly?

A. 5. I do not recollect the exact words: in purchasing the interest I assumed the taxes.

117 Q. 6. Had not your father, C. U. Shreve, made an assignment of certain property for the benefit of his creditors in the summer of 1876, and did you not know of that fact?

A. 6. He made an assignment in 1876; I did not know he was going to make the assignment till after he had made it, and I labored under that impression that he could easily pay out.

Q. 7. Did you not know of the assignment very soon after it was made?

A. 7. I saw it on the court record, brought to the office of R. G. Dun & Co., the morning after the assignment.

Q. 8. Did you think, in July, 1877, that that assignment would pay out?

A. 8. I do not recollect; my impression is that I thought in July, 1877, that he could pay out; I knew very little of his affairs.

Q. 9. Had not all his property been sold under execution or by marshal's sale at the chancery court prior to July 9, 1877?

A. 9. I do not know.

Q. 10. Were not some household effects of your father's sold under execution, and did you not know of that sale?

A. 10. I purchased the household effects myself some months since.

Q. 11. At what price did you buy these household effects, and did you pay for them?

A. 11. I think it was about twelve or thirteen hundred dollars; I raised the money by giving my notes, with D. P. Faulds 118 and Mrs. Belle S. Shreve, as security; there has been about three hundred dollars paid so far on the notes on which I raised the money, and the remainder renewed; in explanation, I would say that I gave a sale bond for the property in court, when that fell due I paid $150.00 out of money I had on hand, and raised the balance as stated above; and on the notes on which I raised this balance I paid another $150.00, and renewed the notes for the balance.

Q. 12. You stated that you have expended for the support of your father's family between $600 and $800 out of your own means; does the total amount which you then spent, consisting of income derived from the trust estate, and of said $600 to $800, include the back taxes you have paid, or which the trustee has paid, and the amount paid by you on account of their purchase price of household effects above mentioned or either?

A. 12. The $600 or $800.00 dollars saved out of my salary was used in household expenses and partly in paying these notes for the furniture and part of the purchase price of the trust estate; none of the $600.00 or $800.00 was used in paying back taxes.

Q. 13. Did you not use $300 of the money which you stated you expended for the support of the family in making part pay-119 ment for the purchase price of the furniture and household effects?

A. 13. I used $150 of the $600 or $800; I borrowed the other $150.

Q. 14. Did not Mr. J. M. Shreve, the trustee, pay the back taxes out of the gross income before paying over to you?

A. 14. Yes.

Q. 15. Did you hear of the sale of the real property of your father by the Louisville chancery court when that sale took place, and did you hear whether the proceeds had been sufficient to pay the encumbrances, and whether anything was realized for the general creditors?

A. 15. I heard of the sale at different times what it realized; I do not know, neither did I know, whether it was sufficient to pay encumbrances, or whether anything was realized for the general creditors.

Q. 16. Did you not see the marshal's advertisements of sale of real estate of your father in the newspapers from time to time?

A. 16. I casually saw advertisements in the papers, but what property I do not recollect now.

Q. 17. Did you not read all of these advertisements before July 9, 1877?

A. 17. I did not.

Q. 18. Were not several of these advertisements published before July 9, 1877?

A. 18. I do not recollect; my impression is that they were.

120 Q. 19. Did not R. G. Dun & Co. have special reports about your father; and, if so, what were they?

A. 19. My father was not in business, and we do not report people not in business.

Re-direct examination by counsel for defendants:

Question 1. How long since you purchased the household effects at said execution sale of which you spoke?

Answer 1. I do not remember the exact time; it was some time last winter.

Q. 2. Did you execute a mortgage at said time to D. P. Faulds to secure him as your surety in said purchase?

A. 2. I did; the mortgage is still on the furniture.

T. T. SHREVE.

Adjourned, by agreement of counsel, to July 9, 1879, at 11 o'clock a. m.

JNO. C. WHARTON,
Special Examiner.

Met the 9th day of July, 1879, at 11 o'clock a. m., pursuant to adjournment. Both complainant and defendant being present by counsel, and no witness being present, adjourned, by agreement of counsel, to July 10th, 1879, at 12 o'clock m.

JNO. C. WHARTON,
Special Examiner.

121 Met the 10th day of July, 1879, at 12 o'clock m., pursuant to adjournment. Both complainant and defendant being present by counsel, and neither desiring to take further proof, the taking of depositions herein was closed by agreement.

JNO. C. WHARTON,
Special Examiner.

Also the record of the superior court of Cook county, in the suit of James Buchanan, complainant, against said Charles U. Shreve *et al.*, showing that at a term of the superior court of Cook county, in the county of Cook, and State of Illinois, which was being held in August, 1878, said James Buchanan, who is one of the defendants herein, did, on the 16th day of August, 1878, exhibit his bill of complaint on the equity side of said court in the court last aforesaid, being then and there a court of competent jurisdiction, and having jurisdiction of the subject matter of said suit against all the same persons who are defendants in this present bill, the said Buchanan excepted, wherein the said Buchanan claimed to represent, and did represent, all the creditors of said Charles U. Shreve, and claiming that said Charles was insolvent, and that the said deed to said Thomas T. Shreve was void, as made in fraud of creditors, and claiming that the equitable interests of said Charles in the same premises as are in this present bill of complaint described were liable for the debts of said Charles as is now claimed in this present bill; and praying 122 relief against these defendants in the same manner and to the same effect as the said complainant herein now prays by his present bill, the only difference being that said proceedings in bankruptcy had not then been had and were not set up in the said bill of said Buchanan, but the said Buchanan claimed under the general assignment for the benefit of creditors of said Charles, to which reference has herein been made, alleging that he had succeeded to the rights of said John M. Shreve under said assignment, by virtue of a certain decree of said Louisville chancery court, and under a certain instrument of writing made by said John M. and Charles U. Shreve in pursuance of such decree to said Buchanan, conveying to said Buchanan all the right, title, and interest which said John M. Shreve acquired under and by virtue of said deed of assignment; that it also appeared by said record that the defendants to said bill appeared and filed their demurrer to said Buchanan's bill, demurring for want of equity in said bill; and the said Buchanan, by his counsel and solicitor therein, who was the said Gwynn Garnett, Esq., who is also the counsel and solicitor for this present complainant, submitted the said cause to the court, as did said defendant by their counsel and solicitors who were the same, who appear herein, and after full argument had thereon the court 123 rendered its decree therein sustaining the said demurrer, and thereupon, on motion of said Buchanan's solicitor therein, leave was granted by said court to said Buchanan to amend his said bill in two weeks from the time of said decree, sustaining said demurrer, which was on the 12th day of November, 1878, at a term of said court; it was also proved that since the filing of the bill in this cause by said Thaddeus Spindle, assignee, &c., the said bill of said Buchanan had been dismissed for want of equity by said superior court of Cook county.

THOMAS DRUMMOND.

[Endorsed.]

Filed Sept. 27, 1880.

WM. H. BRADLEY, *Clerk.*

Afterwards, to wit, on the twenty-second day of January, A. D. 1881, in the December term, A. D. 1880, of said court, in the record of the proceedings thereof in said entitled cause in chancery, before the Hon. Thomas Drummond, circuit court, appears the following entry, to wit:

THADDEUS W. SPINDLE, Assignee in Bankruptcy of Charles U. Shreve,
vs
CHARLES U. SHREVE and JOHN M. SHREVE, *et al.*
} In Chancery.

124 And now at this day comes the said plaintiff, Thaddeus W. Spindle, and prays an appeal from the decree of this court, which was rendered in this cause on the twenty-seventh day of September, A. D. 1880, to the Supreme Court of the United States, which is granted by the court, and the bond filed in the case approved.

The appeal bond filed in said entitled cause on the same day, to wit, the twenty-second day of January, A. D. 1881, is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that we, Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, bankrupt, as principal, and Gwynn Garnett, of the city of Chicago, State of Illinois, as surety, are held and firmly bound unto Charles U. Shreve, John M. Shreve, Thomas T. Shreve, A. L. Corey, J. W. Marley, James P. Brewster, L. M. Shreve, Sallie B. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, Charles U. Shreve, Jr., James Buchanan, and L. L. Shreve in the penal sum of five hundred dollars ($500.00), for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators firmly by
125 these presents. Sealed with our seals, and dated the 27th day of December, A. D. 1880.

The condition of the above obligation is such that whereas in a certain cause lately pending in the United States circuit court for the northern district of Illinois, on the chancery side thereof, wherein the said Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, bankrupt, was complainant, and the above-named obligees were defendants, there was a final decree entered on the 27th day of September, A. D. 1880, dismissing the bill of complaint at said complainant's costs, from which decree the said complainant, Thaddeus W. Spindle, assignee as aforesaid, has prayed for and obtained an appeal to the Supreme Court of the United States to reverse the said decree. Now, the condition of the above obligation is such that if the said Thaddeus W. Spindle, assignee as aforesaid, shall prosecute his said appeal to effect, and answer all damages and costs, and abide by the order and decree of said circuit court of the United States, and of the said Supreme Court, if he shall fail to make his said plea good, then the above obligation to be void, else to remain in full force and virtue.

T. W. SPINDLE, [SEAL.]
Assignee in Bankruptcy of Charles U. Shreve, Bankrupt.
GWYNN. GARNETT. [SEAL.]

June, in the year of our Lord one thousand eight hundred and eighty-one.

THOMAS DRUMMOND.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

William Garnett, Jr., being first duly sworn by me on this 22d day of June, 1881, (he having personally appeared before me, the subscriber, E. A. Drummond, commissioner of the circuit court of the United States for the northern district of Illinois,) made oath that he delivered a true copy of the within ciiation to A. L. Corey, J. W. Marley, James P. Brewster, and L. M. Shreve on the 21st day of June, A. D. 1881.

WILLIAM GARNETT, JR.

Subscribed and sworn to before me June 22, 1881.

E. A. DRUMMOND, *U. S. Com.*

NORTHERN DISTRICT OF ILLINOIS.

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that I am well acquainted with the handwriting of E. A. Drummond, whose name is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was, at the time of signing the same, and is now, a United States commissioner duly appointed, qualified, and commissioned by said court, and that as such, full faith and credit are and of right ought to be given to all his official acts.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at my office in Chicago, in said district, this twenty-second day of June, A. D. 1881.

[SEAL.] WM. H. BRADLEY, *Clerk.*

132 UNITED STATES OF AMERICA,
District of Kentucky, } *ss:*

John Speed Peay, Jr., being first duly sworn by me on this 6th day of July, A. D. 1881, (he having personally appeared before me, the subscriber, James A. Beattie, commissioner of the circuit court of the United States for the district of Kentucky,) made oath that he delivered a true copy of the within citation to John M. Shreve, Thomas T. Shreve, Sallie T. Shreve, Evelina Shreve, Mary E. Shreve, and James Buchanan, to each of them, one copy on June 24th, 1881; to Charles U. Shreve, Charles U. Shreve, Jr., and L. L. Shreve, to each one copy on June 27th, 1881, and to Sallie B. Shreve one copy on July 5th, 1881.

J. SPEED PEAY, JR.

Subscribed and sworn to before me by J. Speed Peay, Jr., this sixth day of July, 1881.

[SEAL.] JAMES A. BEATTIE,
Commissioner of the Circuit Court of the United States
for the District of Kentucky.

Endorsed: Spindle, assignee, &c., *vs.* Shreve *et al.* Citation. Fee for service, $2.50, paid by appellants. J. S. Peay, Jr.

Endorsed on cover: N. Illinois C. C. U. S. No. 289. Thaddeus W. Spindle, assignee in bankruptcy of Charles U. Shreve, appellant, *vs.* Charles U. Shreve, John M. Shreve, *et al.* Filed 10th September, 1881.

111-542

IN THE

UNITED STATES SUPREME COURT

(CASE NO 289.)

OCTOBER TERM, A. D. 1883.

THADDEUS W. SPINDLE., assignee in bankruptcy of CHARLES U. SHREVE, APPELLANT.

vs.

CHARLES U. SHREVE, JOHN M. SHREVE,
ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLANT
BY
GWYNN GARNETT.

The references are to top pages of Record

STATEMENT OF CASE.

This is a bill filed by appellant to establish his rights as assignee in bankruptcy to the interest of Charles U. Shreve, bankrupt, in certain property in Chicago, and to compel John M. Shreve, the Trustee, in whose name the legal title stands, to account for rents and profits.

The interest of appellant arises under the following state of facts:

November 5th, 1869, Thomas T. Shreve, died testate, seized in fee of the premises in question, and other property, his will being probated in Louisville, Ky., November 15, 1869. (Rec. p. 2.) The clauses of the will, which are of importance, are the 9th, 10th, 12th, 13th and 15th. They are found in the record pages 6 and 7.

In pursuance of an order made by the Louisville Chancery Court, in a case wherein David P. Faulds, Executor of said estate, was complainant, and the widow and heirs of the deceased were defendants, including said Charles U. Shreve, said Faulds conveyed the premises in question and other property to John M. Shreve as Trustee, under the terms of the will for said Charles U. Shreve. (Rec. pp. 31-32.) On August 31st, 1878, Charles U. Shreve filed his Petition in Bankruptcy in the District Court, for the District of Kentucky, was adjudicated a bankrupt, and the appellant appointed his assignee, and the estate of the bankrupt duly conveyed to him. (Rec. p. 32.) The bankrupt's debts amount to more than $30,000.00, (Rec. p. 38,) all of said indebtedness having been contracted prior to June 20th, 1876, and about $6,000.00 of it being due to John M. Shreve alone. (Rec. p. 49.) The Trustee refused to recognize the assignee in bankruptcy as entitled to the rents and profits of the premises, but continued to pay them to Thomas T. Shreve, (son of Charles U.) under the pretense that he was the *bona fide* grantee of Charles U., (Rec. pp. 36, 46, 47, 48,) by virtue of the deed hereafter to be mentioned. The questions in the case are:

1st. Whether the interest of Charles U. Shreve is real or personal property—if real, whether the restraint on alienation contained in the will is superior to and over-rules the Illinois statute on Judgments and Executions hereafter quoted—if personal, whether the statute of Kentucky hereafter quoted; made Chas. U. Shreve's interest liable to his creditors, or whether the restraint on alienation in the will is operative.

2nd. Whether the will of Thomas T. Shreve raises a trust in the premises or in the interest of Charles U. for the benefit of the children of said Charles.

3rd. Whether the pendency of the suit of Buchanan vs. Shreve et. al. (referred to in the answer Rec. p. 19) is a bar to this suit or can be pleaded in abatement, the said last mentioned suit being in the State Court, and the answer setting up that it was still pending and undetermined. The appellant in this case was not a party to that suit.

4th. Whether the instrument (without seal) made by Charles U. Shreve July 8th, 1877, to his son Thomas T. Shreve, for the alleged consideration of $500.00, is void because made to hinder, delay and defraud the creditors of said Charles U. Shreve.

ASSIGNMENT OF ERRORS.

First. The said Circuit Court erred in dismissing said bill of complaint.

Second. The said Circuit Court erred in not ordering said defendant and appellee, John M. Shreve, to account to said appellant for the rents, issues and profits of the premises in said bill described, which said John M. Shreve received, or might have received, after the 31st day of August, 1878.

Third. The said Circuit Court erred in not ordering and decreeing that appellant, as such assignee, was entitled to, and vested with, all the right title and interest of said Charles U. Shreve, bankrupt, in and to the premises described in said bill, and the rents, issues and profits thereof.

Fourth. Said Circuit Court erred in not setting aside the deeds from Charles U. Shreve to Thomas T. Shreve.

BRIEF AND ARGUMENT.

Does the will of Thomas T. Shreve operate in restraint of alienation by Charles U. of his interest in the trust property?

The interest of Charles was expressly made subject to execution by Sec. 1 of Chap. 57, entitled Judgments and Executions, Stat. of Illinois. (See Vol. 1 of Gross Stat. 1869.) Said section is as follows:

Section 1. All and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment has been, or hereafter shall be obtained, in any court of record, either at law or in equity, for any debt, damages, costs or other sum of money, shall be liable to be sold upon execution to be issued upon such judgment, and the said judgment shall be a lien on such lands, tenements and real estate, from the last day of the term of the court in which the same may be rendered, for the period of seven years: Provided, that execution be issued at any time within one year on such judgment, and from and after the said seven years, the same shall cease to be a lien on any real estate, as against bona fide purchasers, or subsequent incumbrances by mortgage, judgment or otherwise: Provided, that in case the party in whose favor any such judgment shall have been entered, shall be restrained by injunction out of chancery, or order of any judge or court, either from issuing execution or selling thereon, the time which he shall be so restrained, shall not be deemed or considered as any part of the said seven years. The term "real estate" in this section shall be construed to include all interest of the defendant or any person to his use, held or claimed by virtue of any deed, bond, covenant or otherwise, for a conveyance, or as mortgagee or mortgagor of lands in fee, for life or for years.

That the interest of Charles, under his father's will, was an equitable right or interest for his life can scarcely admit of debate. Clause 9 of the will provided that testator's *estate* should be divided into five parts. Clause 10 willed *one fifth* of the same to Charles subject to the restrictions thereinafter named. Clause 12 provides that one-half of each share shall be income paying real estate and is to be conveyed to a Trustee *to be held for the use and benefit of each child* during his or her life, and then to descend to his or her heirs without power to incumber *the estate* or anticipate the rents. Now, could language indicate any plainer than this, that it was the estate itself that was conveyed for the benefit of Charles? If not, why add strength to that impression by inserting a prohibition against encumbering *the estate?* Why was it not sufficient to prohibit the anticipation of *the rents?* The only conceivable answer is that the testator intended to vest an equitable interest in the estate itself in his son and knew that the language he had used would have that operation. In the case of *Tillinghast* vs. *Bradford,* 5 R.I. 205 ~~*supra*~~, the will of the father did not even devise the *estate* for the benefit of his son, but devised it to a trustee, directing him to collect the rents, etc., and after paying taxes, etc., to pay the net income to the son. Yet the court held that "the nature of the debtor's interest in the trust property, under his father's will, was an *equitable estate for life.*" To the same effect see *Pope's Executors* vs

Elliott & Co. 8. *B. Mon.* 65. and *Mather* vs. *Mather*, 103 Ills., 608.

There is much better reason for saying the interest of Charles U. Shreve was an equitable estate for life—if it was not such an interest, then such an interest is impossible in case of an active trust where the Trustee is to collect the rents, pay taxes and pay the net income to the beneficiary. But it will be claimed that *Sec.* 40 *of Chap.* 21, entitled Chancery, Gross. Stat. 1869, protects the interest from execution: That section reads as follows: "Whenever an execution shall have been issued against the property of a defendant, on a judgment at law or in equity, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in Chancery against such defendant, and any other person, to compel the discovery of any property or thing in action belonging to the defendant; and if any property, money or thing in action due to him or held in trust for him, and to prevent the transfer of any such property, money or thing in action, or the payment or delivery thereof to the defendant; except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant himself." That section only provides for a case where an execution has been returned *nulla bona*, but does not profess to interfere with an execution in any case where it has been or can be levied. It does not in terms, nor can it by any fair interpretation be held, to prohibit the levy and sale under execution, of any equitable interest where such levy and sale can be made without the aid of a bill of discovery. Sec. 1 of the act on Judgments and Executions, as we have seen, makes all equitable interests in real estate subject to execution. Sec. 40 of the Chancery act simply makes an exception to the rule thereby established authorizing bills of discovery. There is no difficulty in harmonizing the two statutes, and they should be harmonized according to reason and justice. If it is necessary to reach an equitable interest by means of a bill of discovery it may be assumed that it is such an interest as will not induce men to give the beneficiary credit, and that fact furnishes some reason for denying creditors the right to resort to it.

The very term "bill of discovery" indicates a process for uncovering something that was covered up, and any thing that is covered up is not likely to procure credit. But when the equitable interest is of such a nature that a bill of discovery is not necessary to subject it to execution, then there is always danger that the beneficiary may be credited on faith of such interest, and this very danger, although it may not always operate, is sufficient reason to hold open to execution, all such interests as are not necessary to be reached by such a bill. Hence, I apprehend the Legislature meant by the two sections referred to, simply this: If a person creating a trust for the benefit of a third party, puts it in such shape that the interest of the beneficiary can only be reached by bill of discovery, it shall be free from the attacks of creditors, but if he leaves it in such shape that under the provision of the law, an execution may be levied upon the interest of the beneficiary, then it shall not be withheld from creditors.

But I go still further. Even if this court should hold that the interest is of such a nature that an execution could not be levied upon it, still it passed under the bankrupt assignment, because the intention of the bankrupt act was to convey to the assignee all property which the statute on exemptions does not expressly withhold for the benefit of the debtor. And even if the interest was of such a nature that it could only be reached by bill of discovery, still it is obvious that Sec. 40 of the Chancery Act was only intended to prevent the debtor from being *compelled* to give up such interest, but was not intended to prevent him from *voluntarily* aliening it.

The will does provide that Charles shall be "without power to encumber said estate or anticipate the rents." The rule was established in England by the case of *Brandon* vs. *Robinson*, 18 *Ves.* 429, decided by Lord Eldon in 1811, where it was held that in case of a trust to pay the dividends of an estate from time to time into the proper hands of a man during his life, and that he should not grant or transfer any part of them by way of anticipation, the interest vested in the assignee of the beneficiary upon his bankruptcy. The Lord Chancellor, on page 432 says: "There is an obvious distinction between a disposition to a man, until he becomes bankrupt, and then over, and an attempt to give him property, and to prevent his creditors from obtaining any interest in it, though it is his. Can it be contended that, if the bankrupt during his whole life never signed a receipt, the interest during his life would be undisposed of and would fall into the residue?" And he draws a distinction (p. 434) between a restraint of alienation imposed upon a married woman, and one imposed or sought to be imposed on a man. He says, "It was not before Miss Watson's case that these words, 'not to be paid by anticipation' were introduced. I believe these words were Lord Thurlows own words, with whom I had much conversation upon it. He did not attempt to take away any power the law gave her, as incident to property, which, being a creature of equity, she could not have at law; but as under the words of the settlement it would have been hers absolutely, so that she could alien, Lord Thurlow endeavored to prevent that by imposing upon the Trustees the necessity of paying to her from time to time and not by anticipation; reasoning thus, that Equity, making her the owner of it, and enabling her, as a married woman to alien, might limit her power over it; but the case of a disposition to a man, who, if he has the property, has the power of aliening, is quite different."

In the case of *Brandon* vs. *Robinson*, the assignee in bankruptcy of the beneficiary made claim to the dividends. It was claimed in the court below that the rule in *Brandon* vs. *Robinson* had for its basis the English Bankrupt and Insolvent Acts. If there was no other basis for the decision it is singular that so great a Chancellor as Lord Eldon did not show in his decision what he was relying upon.

The decision is placed upon a true and correct principle and not upon any arbitrary and unbending provision of statute. The case of *Woodmeston* vs. *Walker*, 2 *Russell & Myl*, 196, was a bequest of one-third of the residuary estate for the purchase of an annuity for the separate use of a female who was single at the date of will and at death of testator, without power to sell or assign the same by anticipation. Lord Chancellor Brougham held she was entitled to the fund at once on death of testator, without having it laid out for an annuity, and that her option was not affected by the clause against anticipation. In *Jones* vs. *Salter*, 2 *R. & M.* 208, and *Brown* vs. *Pocock*, *Ib.* 210, it was held that a clause against anticipation, annexed to a life interest in trust funds, did not prevent the beneficiary from assigning her entire interest.

These cases would seem to dispose effectually of the proposition that the rule in *Brandon* vs. *Robinson* has no foundation outside of the English Bankrupt and Insolvent Acts. That rule has been recognized and followed so often that it has become familiar text book law, and is supported by the following authorities, among others viz:

Nichols vs. *Levy*, 5 *Wall*, 433.

Dick vs. *Pitchford*, 1 *Dev. & Bat. Eq.* 480.

Graves vs. *Dolphin*, 1 *Sim.*, 66.

Snowdon vs. *Dales*, 6 *Sim.* 524.

Piercy vs. *Roberts*, 1 *Myl. & K.*, 4.

Green vs. *Spicer*, 1 *Russ & Myl.*, 395.

Tillinghast vs. *Bradford*, 5 *R. I.* 205.

Lewin on Trusts, § 133 *et. seq., side paging.*

2 *Story's eq. Jur.* § 974 a.

Tudor's Lead. Cas. on Real Prop. 864.

Carson vs. *O'Bannon*, 7 *Rich. Eq.* (*S. C.*) 219.

Pollard et. al. vs. *Merrill* et. al. 15 *Ala.* 169-174.

The case of *Tillinghast* vs. *Bradford*, 5 *R I.* 205 is so nearly analagous to the case at bar that we are tempted to give it a full statement here. The will of Hezekiah Sabin devised a certain undivided share of his real estate to Charles F. Tillinghast, making Bradford his successor in trust, to hold the same, for the said trustee to receive the rents and profits thereof and after paying taxes, etc. to pay to Hezekiah Sabin, his son, the net income thereof during his natural life for his own use, and from and after his decease to convey the said portion according to the provisions of the last will of Hezekiah, the son, and in default of such will, to his heirs at law; the will also provided that the payment of the rents to testators' children should be made to them as the rents became due or were received and not in the way of anticipation nor to their assign; and that such payments should be for their sole and separate use. To save himself from imprisonment on execution, the son, on Nov. 24th, 1856, took the poor debtors' oath and executed an assignment of "all my estate, both real and personal not exempt from attachment by law" for the benefit of all his creditors. The suit was by the assignee against the trustee under the will, to compel the payment of the rents to him.

Ames C. J. in delivering the opinion of the court said: "The nature of the debtor's interest in the trust property under his father's will *was an Equitable estate for life*, with a power of disposing of the remainder in fee by will, in default of such disposition such remainder to be conveyed to his heirs at law; there being also a clause in the will, against anticipation and alienation of the rents and profits during the debtor's life. It is quite clear that it was the intention of the testator to make an alimentary provision for his son during life, which should give him all the advantages of an estate in fee without the legal incidents of such an estate—alienability, unless by will, and subjectiveness to the payment of the son's debts. Such restraints, however, are so opposed to the nature of property—and so far as subjectiveness to debts is concerned to the honest policy of the law, as to be totally void, unless, indeed, which is not the case here, in the event of its being attempted to be aliened, or seized for debts, it is given over by the testator to some one else. This has been the settled doctrine of a Court of Chancery, at least since *Brandon* vs. *Robinson*, 18 *Ves.* 429; and in application to such a case as this, is so honest and just, that we would not change it if we could. Certainly no man *should* have an estate to live on, but not an estate to pay his debts with. Certainly property available for the purposes of pleasure or profit should also be amenable to the demands of justice." In Shreve's will there was no limitation over, of the interest of Charles in case he should attempt to assign or convey his interest—hence this case does not come within the exception which allows the clause against anticipation to operate.

It may be the case of *Pulliam* vs. *Christy*, 19 Ills., 331, will be relied on by the appellees. But the question now under discussion was not considered in that case nor was it decided. In construing the deed in that case it was merely held that the conveyance was a conveyance of the remainder under the power in the will, and that the deed being under the power, did not transfer the life estate which was devised to the grantor in the deed. It was not held in that case that the widow, the grantor in the deed, could not have conveyed her life estate if she had made a deed plainly indicating that she intended to do so. Nor, indeed, could it have been so held, because the only parts of the will which are supposed to contain any restraint on alienation are shown on page 332 of the report, where the court says: "He devised by this will to Lucy Ogle, his wife, as follows: 'For her sole use and profit, all my personal property, of every kind and description whatsoever. Also I give and bequeath to the above named Lucy Ogle, to have and to hold during her natural life, the land that I now own and reside on, to occupy and to use the said land in the same way as it would be lawful for her to do if the title were full and complete in her.' He further devised, to take effect at the death of his wife, two other tracts, part and parcel of the land on which he resided, to the children of two of his nephews, by metes and bounds, and then proceeded: 'And the land not included in the above bequest, I give and bequeath to my dearly beloved wife, Lucy Ogle, to dispose of at her death to any person she may think best to live with her and take care of her.'" It is obvious that the case merely amounts to this: the power in the will only applies to the remainder, and as the widow conveyed under the power, she conveyed nothing but the remainder.

The case of *Nichols* vs. *Eaton*, 1 *Otto* 716, has been relied on by appellees to support the restraint on alienation contained in the will. In that case the will devised property to trustees upon trusts to pay the income to testatrix four children during their lives, and provided that in case of the bankruptcy of either of her sons, *then the trust as to his share should immediately cease and determine—and the income of his share, to be paid thereafter to his wife and children.* And in case he had no wife or child then the income was to accumulate in augmentation of the principal.

There was also a proviso that in case of the cessation of the income as to any of her sons, otherwise than by death, *the trustees should have discretion, but without its being obligatory upon them*, to pay or apply for the use of such son or for the use of his family, such part of the income to which such son would have been entitled in case the forfeiture had not happened. In 1867 Amasa Eaton, one of the testatrix' sons, became bankrupt, having neither wife nor child. His assignee in bankruptcy, Nichols, brought suit against the trustees to reach his interest under the will.

It will be observed that there are two provisions in this will which make the devise valid under the English decisions, and at the same time place the income beyond the reach of creditors. Ist, The provision for the determination of the rights of the beneficiary whenever he should become bankrupt. 2nd, The absolute discretion given to the trustees to allow the income to accumulate with the principal or to pay it to Amasa.

Either of those provisions was ample to protect the fund from the attacks of creditors of Amasa. So that the case of *Nichols* vs. *Eaton* is essentially different from the case at bar, and no process of reasoning can make the two similar.

There are several reasons why that case should not be regarded as authority in the case at bar:

1st. The effect of such a statute as Sec. 1 of the Chapter on Judgments and Executions of the Statutes of Illinois was not considered. It can scarcely be contended that the testator had the right by his will to set aside and annul that section of the law.

2nd. It is directly in conflict with *Nichols* vs. *Levy*, 5 *Wal.* 433, where the court said: "It is a settled rule of law that the beneficial interest of a *cestui que trust*, whatever it may be, is liable for the payment of his debts. It cannot be so fenced about by inhibitions and restrictions as to secure to it the inconsistent characteristics of right and enjoyment to the beneficiary and immunity from his creditors." But the court proceeds to decide the case on the Statute of Tennessee which secured for the debtor what the common law had denied him.

3rd. The cases cited in *Nichols* vs. *Eaton* do not sustain the doctrine now contended for by the appellees, as will be shown by the following analysis:

Fisher vs. *Taylor*, 2 *Rawle* 33, was an action of ejectment, and the court held, 1st, That the will did not create an estate in the *cestui que trust* under the statute of uses. 2nd, That the *cestui que trust* had no life estate in the property, nor any interest which is subject to be sold for the payment of his debts.

The latter clause is dictum—the question was as to who was entitled to the possession of the land and the court held that it was necessary the trustees should hold the legal estate and the possession for the purposes of the trust.

In *Holdship* vs. *Patterson* 7 *Watts* 547, the donations were not for the benefit of the defendant in the execution, but were (see p. 548) "expressly and solely for the purpose of affording relief and support to the *family* of said Robert Patterson, *and the means of educating his minor children*, and in no manner or way for the interest or advantage of said Robert Patterson, except only a maintenance to be allowed him *for his services rendered.*"

Shankland's Appeal, 47 *Penna. St.* 113, was a bill filed by the *cestui que trust* to compel a specific performance of a contract which he had made agreeing to sell an estate for his life to one Berry. The court held that as the estate was simply a trust and Shankland could not convey the estate which he had contracted to convey, Berry was not bound to take it. The court held the legal estate was in the trustee and that the *cestui que trust* could not take it from him. *What the court says about the estate not being liable to debts is pure dictum.*

The contract not specifying what kind of an estate was to be conveyed, Berry had a right to suppose it was a legal estate. If he took a deed of an equitable estate, he would take it subject to equities, and that a Court of Equity would not compel him to do.

In the case of *Ashhurst* vs. *Given*, 5 *Watts & Serg.* 323, the son or *cestui que trust* was only to have *a reasonable support* out of the trust fund *for his personal services rendered.*

Any interference in the trust in the above case by creditors would have destroyed the trust for the benefit of the ultimate *cestui que trusts*, the children of said son.

The case of *Brown* vs. *Williamson's executors*

36 *Penn: St.* 338, was a case where the son of the testator was to have a support out of the general trust fund in consideration of his personal services in managing the fund. The court held that the son took no beneficial interest in the fund, and hence there was nothing upon which an execution against him could be levied.

The case of *Still* vs. *Spear*, 45 *Penn. St.* 168, was a bequest of a certain fund to a trustee, in trust to pay the interest *at his discretion* to A. B., and in case of his death, without leaving issue, to pay the principal to the children of C. D. The court held that A. B. had simply an interest in the income of the fund, and that *the body of the legacy* was not attachable by a creditor of A. B. What the court says in regard to provisions for children so as to protect them from creditors, is put on the ground of the *discretion* vested in the trustee; "Beyond controversy, a trust to pay interest *at the trustee's discretion*, is good in England. It ought to be good here."

In the case *Nickell* et. al. vs. *Handy* et. al. 10 *Gratt.* 336, there was a trust estate vested in Campbell and he was to use the property so as to be most advantageous to the *interest and support* of Mrs. Handley and her 5 children during Mrs. Handley's life, with remainder to her children. The court held, 1st, that it was the intention of the testatrix that the property should be *kept together* for the joint support of Mrs. H. and her family during the life of Mrs. H. 2nd, that no interest, legal or equitable in the property itself vested in Mrs. H. 3rd, on page

339, "*if Mrs. H. had any interest therein subject to her own disposal, or which could be separated from the interests of others without impairing their rights, such interest might on familiar principles, be subjected to the payment of her debts. Cutts* vs. *Walker*, 2 *Leigh* 268—*Haley* vs. *Williams*, 1 *Leigh*. 140."

In *Pope's Ex'rs* vs. *Elliott & Co.*, 8 *B. Mon.* 56, the court says on page 61: "If the estate or thing holden in trust, was that out of which the $25.00 a month is to issue, then it would seem that the principal sum or estate, and not the profits or interest, shall be subjected." And on page 63: "Certainly the estate of Wm. Pope, given in trust to his executors for the purpose of raising the various sums disposed of by the will were not the effects or the estate of the persons who were to receive these sums." And on page 65: "*Such a bequest* (*that is for support*) *is obviously different from a devise of property or money in trust, for the use or benefit of an individual and from a devise of specific property in trust, to apply the proceeds or profits to his support. These devises give a direct interest in some specific subject or in a particular sum of money.*" The court then proceeds to elaborate that distinction, but holds that the creditors of the *cestui que trust* were entitled to the unappropriated accumulations of the $25.00 per month.

The case of *Campbell* vs. *Foster*, 35 *N. Y.* 361, simply decides that the interest of a beneficiary in a trust fund, created by a person other than the debtor, cannot be reached by *creditor's bill*—that is the result of the Statute of the State of New York, which provides, like Sec. 40 of our Chancery Act, that trusts created by third persons shall not be reached by bill of discovery.

4th. In *Nichols* vs. *Eaton* it is said: "If the doctrine is to be sustained at all, it must rest exclusively on the rights of creditors." We have already shown that the rights of creditors as fixed by the statutes of this State, make the restraint on alienation void and of no effect. The rights of creditors under Stat. 29, Charles II. only extended to equitable interests in *lands and tenements*, while our statute has enlarged their remedy and extended their rights to all equitable interests, and even to lease holds.

Thus it is plain that the cases cited in *Nichols* vs. *Eaton* may be reduced to five classes:

1. Random remarks or pure dicta.
2. Cases of discretion in the trustee.
3. Cases of support (bread, meat, shelter, clothing) in consideration of services rendered from day to day.
4. Cases where a general trust fund is to be invested for the raising of various sums for various objects, and the beneficiary gets no interest whatever in the fund itself, as in *Pope's Ex'rs* vs. *Elliott & Co.*
5. Cases holding a trust fund created by a third party to be protected from a creditor's bill by virtue

of express statute.

The Exemption Statutes which are referred to in the Nichols case cannot be relied upon to support the doctrine contended for by appellees. They are very limited in their scope and humane in their operation. They reserve to the debtor a small amount of property, to enable him to have a meal prepared for his family, and to enjoy the sleep to which honest labor entitles him. They are not intended to secure any man the means of enjoying unearned luxury or the power to live in genteel idleness while his creditors and their children are hungry for bread. If one man can secure to his son an indefinite amount of property and enable him to defy his creditors, all men can do so, and there is nothing to prevent the capital of the country being tied up for the benefit of the children of those who are now so fortunate as to own it. In such case it seems inevitable that there would be introduced to the next generation an army of well dressed and well fed vagrants and tramps, who may be reckless in contracting debts, but enjoy perfect immunity from paying them. The exemption laws leave a man some motive for life, labor and industry, but the plan for supporting him in genteel idleness leaves him aimless, purposeless, shiftless and worthless. In this connection I ask the attention of the court to the able and searching discussion of this principle, found in §§ 251–267 of Professor Gray's recent work entitled "Restraints on Alienation."

The spirit which revives this "family law" is not a new growth. It appeared in England in the reign of Edward I., when the nobility became discontented with conditional estates, because the ingenuity of the time would not allow them to remain conditional, but devised means for turning them into absolute estates. Blackstone says, Book II, p. 112: "The nobility who were willing to perpetuate their possessions in their own families, to put a stop to this practice, procured the Statute of Westminister the second (commonly called the Statute *de donis conditionalibus*) to be made, which paid a greater regard to the private will and intentions of the doner, than to the propriety of such intentions, or any public consideration whatsoever."

On page 116 he describes some of the results of this celebrated statute; it occasioned infinite difficulties and disputes; children grew disobedient; farmers were ousted of their leases; *creditors were defrauded of their debts, etc.* These things were intolerable even to the English. Common recoveries were introduced by the judges for the purpose of evading the statute, and then to make the remedy more effectual, by Stat. 32, Henry VIII., c. 36, a fine duly levied by the tenant in tail was declared to be a complete bar to him and to his heirs and all other persons claiming under such entail. England had enough of protecting the family in luxury and cheating the creditor. Hence when in the case of *Brandon* vs. *Robinson*, *supra*, it was proposed to revive the Statute *de donis* in a more elaborate and all-embracing form, the great English Chancellor refused to approve it, and English judges and courts have ever since followed his enlightened decision.

The Statute *de donis* only embraced *tenements* or estates of inheritance, and did not apply to personalty. If unmixed evil followed its enactment, would the mischief diminish if lands, tenements, goods and chattels were permitted to be secured to the debtor and protected from the creditor? This country has never enjoyed the luxuries of the statute—its evils are almost hidden in the obscurity of time; and now it is proposed to revive in a much more objectionable form a system which has been almost universally condemned. They who now happen to be capitalists would like to continue their estates in their children and provide against the invasion of creditors. But we deny that their wishes should control a great public policy which has been approved by long experience and ratified by the best and greatest minds that ever adorned the bench. A candid review of this question we believe will inevitably lead to the conclusion that to allow a man to retain an indefinite amount of property (no matter who gives it to him) without liability to creditors, is not only demoralizing in its tendency upon society, but is a scandal and reproach to the administration of justice.

On the other hand, if it be the law that the interest of Charles was not an equitable interest in real estate, it must have been personal estate and hence was governed by the statutes of Kentucky, where he had his domicil, as the answers show. (Rec. p. 17-24.)

See 23 of Art. 1 Vol. 2 of Stanton's Revised

Stat. Ky., page 230, reads as follows: "Estates of every kind held or possessed in trust shall be subject to the debts and charges of the persons to whose use or for whose benefit they shall be respectively held or possessed as they would be subject to if those persons owned the like interest in the property held or possessed as they own or shall own in the use or trust thereof." (Rec. p. 43.) This statute has been construed by the Court of Appeals of Kentucky and held to give the creditor a remedy against trust property of this character, although there is a restraint on alienation in the will creating the trust.

See *Knefler* vs. *Shreve*, 78 *Ky.* 297.

Samuel vs. *Salter*, 3 *Met.* 259.

2nd. The terms of the will raise no trust for the children of Charles. No such intention is expressed and none can be with any degree of propriety implied. The testator merely gives his reason (Rec. p. 8) for giving his two oldest children rather more than he gives his younger children—and in the case of *Knefler* vs. *Shreve, supra*, the court in construing this very will held that no trust was created for the children.

See also *Benson* vs. *Whittam*, 5 *Sims.* 22.

Thorp vs. *Owen*, 2 *Hare* 611.

Mackett vs. *Mackett*, *L. R. Eq. C.* xiv–51.

Crockett vs. *Crockett*, 1 *Hare* 151.

Byrne vs. *Blackburne*, 26 *Beav.* 41

3rd. The pendency of the suit of *Buchanan* vs. *Shreve* is no defence, either in bar or abatement, to the present suit.

In *Loring* vs. *Marsh*, 2 *Clifford's Rep.* 311, it was held that the pendency of another suit between the same parties, involving the same subject matter, in a State Court was no ground of defence against the suit in the U. S. Circuit Court. The same ruling was made in "The Kalorama," 10 *Wal.* 204—see page 218—and in *Stanton* et. al. vs. *Embrey*, *Adm'r.* 3 *Otto* 548.

It will be observed that the suit and claim of Buchanan is only set up in one of the answers, (Rec. p. 19,) and that it sets up the pendency of the suit as a bar. The only proof which tends to show Buchanan ever had any claim is found on pp. 55–56 of Rec., and that is not proof, but is merely what Buchanan stated in his bill. There is no proof in the record to connect Buchanan with the assignment from Charles U. to John M. Shreve, shown at page 39 of Rec.; nor do any of the answers rely upon or set up that assignment as valid and being still in force. They carefully avoid any reliance on the assignment and do not even allege that it was executed or delivered; hence there was no issue as to the validity or force of the assignment, or as to whether it had been in any manner set aside or annulled. The assignment was introduced in evidence by the appellant merely as a link in the chain to prove the insolvency of Charles U., and that his attempted conveyance to his son was made in fraud of his creditors.

4th. It seems clear that the attempted conveyance from Charles to his son was void because made to defraud creditors. The consideration was $500.00, while the master reports that at the date of the transaction, July 9th, 1877, the life interest of Charles was worth over $18,000.00. (Rec. pp 28–29.) That was a year after Charles made the assignment to John M. (Rec. 39.) Even the $500.00 was paid by the son giving his notes to raise the money, (Rec. pp. 50–51,) and part of those notes he had to pay out of the rents he received from the trust property in question. (Rec. p. 53.) There were at that time certain unpaid taxes on the property, but they were paid out of the rents. John M. Shreve testifies (Rec. p. 49,) "I told T. T. Shreve that I should pay the taxes out of the proceeds of the rent, and he told me of course he expected me to do so." T. T. Shreve testified (Rec. p. 54) that the back taxes were paid out of the rents. The rents were used from that time on for the support of Charles U. and his family so far as they could be spared after payment of taxes. In John M. Shreve's evidence [Rec. p. 48] there is the following:

Question—"State why the taxes on said property have not been paid for the years 1877 and 1878?"

Answer—"Because the money was needed by Charles U. Shreve and his family, and for the further reason that a large portion of the income was needed to reduce the taxes that had accumulated previous to the year 1877."

He also says [Rec. p. 46] that for several months he paid the rents to T. T. Shreve, and after that on several occasions he paid to C. U. Shreve, who presented a power of attorney from T. T. Shreve. C. U. Shreve testified [Rec. p. 53] he considered himself insolvent July 9th, 1877, and that a number of executions, aggregating a large amount, had been issued against him from the Louisville Chancery Court before that time.

Thomas T. Shreve testified [Rec. p. 53] that he knew of his father's assignment the morning after it was made. He lived with his father. The conclusion is irresistible that he knew about his father's affairs; and whether he did or not he could not receive from his father such a valuable property for such a trifling sum while his father was actually insolvent and his creditors without any redress except as against the property now sought to be reached by them.

Respectfully submitted for the appellant.

GWYNN GARNETT.

Chicago, Jan. 19, 1884.

OFFICE SUPREME COURT U.S.
FILED
MAR 11 1884
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1883.

Case No. 289.

THADDEUS W. SPINDLE, Assignee in Bankruptcy of CHARLES U. SHREVE,
Appellant,
vs.
CHARLES U. SHREVE, JOHN M. SHREVE et als.,
Appellees.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

Hon. Thos. Drummond, Judge, presiding.

Brief and Argument for Appellees.

L. M. SHREVE,
Counsel for Appellees.

Beach, Barnard & Co., Legal Printers, 104 Randolph Street, Chicago.

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Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

Hon. Thos. Drummond, Judge, presiding.

STATEMENT OF THE CASE.

This bill was filed on the 27th February A. D. 1879, in the United States Circuit court for the Northern District of Illinois, by the appellant, Thaddeus W. Spindle, as assignee of Charles U. Shreve, in bankruptcy, claiming in the prayer of said bill that the interest of Charles U. Shreve be vested in appellant as such assignee, in certain real estate in the city of Chicago, (12 and 13 Rec.), and for an accounting of the rents and profits, the appointment of a receiver and a restraining order.

Upon a full hearing of the proofs on the bill and answers in the United States Circuit court, Hon. THOMAS DRUMMOND presiding, the bill was dismissed.

On the 16th day of August, 1878, James Buchanon, as assignee, so appointed by the Louisville Court of Chancery, filed and exhibited his bill of complaint in the Superior court of Cook county, Illinois, having jurisdiction of the subject matter against the same parties defendants, invoking the same relief upon precisely the same averments; (Rec., 121) the only difference being that said bankruptcy proceedings had not then been had, and were not set up in said bill of said Buchanon, who claimed under a general assignment made by said Charles, for the benefit of his creditors. (Rec., 188.) It also appeared from said record that the defendants to said bill appeared and filed their demurrer to the bill *for want of equity*, and upon submission of the case by the parties, the complainant being represented by the same able and persistent counsel Gwynn Garnett, Esq., the chancellor sustained the demurrer and dismissed the bill for want of equity. (Rec., 123.)

And afterwards to wit, at the October term, A. D., 1880, and after the judicial determination of this case in the Circuit court of the United States, a writ of error was sued out of the Appellate court for the first district of the State of Illinois, to said Superior court, by the same learned counsel, who filed his brief in said Appellate court where and when said Appellate court affirmed the decree of the said Superior court dismissing said bill for want of equity, as appears from the reported decisions of said court. (Rec., 123.)

The record shows that Thomas T. Shreve of Louisville, Kentucky, died testate, seized of large real estate, situate in Kentucky and Illinois. His will was made 1st March, 1867, and he died the 5th of November, 1869. The will was published and probated the 15th November, 1869, and recorded on same day in Jefferson county records, in which he directs his executor, David P. Faulds, after making various special bequests, and provision for his wife, to make a list of his property, and deliver it to certain named persons who are required to divide the property so listed, into five equal parts; one-half of each part to be conveyed by his executor to each of his children, five in number, in fee, to do with as they please; the other half of each share, income paying property, he directs to be conveyed to a trustee, to be appointed by the Louisville Chancery court, to be held by said trustee for the use and benefit of each child during his or her life, and then descend to his or her heirs, without any power or right of said child to encumber said estate, or anticipate the rents thereof; and directs the trustee to collect the rents, insure the property, make repairs, lease it, and pay the rents to the child in person, as the same may be collected under the terms of the lease; assigning as his reason for so restricting one-half of the interest of each child, that the half conveyed to the children would enable them to prosecute a business, and in the event of misfortune or otherwise, the half so conveyed would give them a comfortable living; and adds, that "having it in his power, it is his "pleasure, and as I believe, my duty to shield and protect "them against casualties and accidents as far as posible."

To his two oldest children he says: he gives rather, more than to the youngest, because they have families' dependent upon them, and their necessities are greater.

David P. Faulds, acting as executor, complied with the requirements of the will, and John M. Shreve was appointed trustee by the Louisville Chancery court for Charles, and the interest set apart by the commissioners for the use of Charles during his life was conveyed by the executor to the trustee on 25th June, A. D. 1870; as such executor "*warranting* and *defending* the *title* to said trus-"tee against the claim or claims of all and every person "whatever." (Rec., 29).

The trustee, Jno. M. Shreve, continued the exclusive management, possession and control of the property, executing leases as he thought best, collecting the rentals making repairs, paying taxes, and insurance, and paid the net proceeds to the *cestui que trust* until the great fire at Chicago, 9th November, 1871, when every vestige of improvement upon the property was swept away. As a result the taxes and assessments upon this hitherto "in-"come paying property" exceeded the rentals, and so continued for several years, and until the trustee, John M. Shreve, from his own resources rebuilt the property. (Kerfoot's deposition, Rec., 85, 86). The universal shrinkage in the values of real estate between the years 1874 and 1878, and the accumulated indebtedness of Charles at Louisville, where the entire indebtedness existed, compelled him on the 20th June, 1876, to make a general assignment for the benefit of all his creditors (Rec., 117, 122), and as shown in Ex. "C" at large.

In this assignment each and every property owned by Charles, real, personal and mixed, is particularly scheduled, intending as he says to assign all his property subject to execution, or "not exempt from execution," and apprehensive that in such a long list he may have forgotten something says, "and any other property which "by *oversight* may not be mentioned."

This assignment was made to J. M. Shreve, trustee for the creditors, to which said Buchannan succeeded on 26th April, 1878.

It will be observed that no mention is made or reference had in this assignment to the property the subject matter of this bill, although it comprised the entire property conveyed by direction of the testator to his trustee, and which was made more than two years previous to the filing his petition in bankruptcy on 31st August, A. D. 1878. (Rec., 73.)

On the 9th of July, A. D. 1877, Charles U. Shreve conveyed the trust property to his son Thomas, the consideration mentioned $500, and the payment of the taxes in arrear about $1,800, and this sale was made more than a year previous to his bankruptcy, and *divested* Charles of all *alienable* interest in the trust property, if he had any, which is the matter submitted to this court.

The answer denies all equity in the bill; that the property sought to be subjected is not liable for the debts of the *cestui que trust;* that under the provisions of the will *there was no estate which passed to* the assignee; that the provision in the will is not contrary to public policy, and there is no error in the record.

SYNOPSIS OF RECORD.

T. I. Shreve died on 5th November, 1869.

His will probated and recorded, Jefferson county, Kentucky, 15th November, 1869.

D. P. Faulds qualified as executor and J. M. Shreve trustee, 16th June, 1870.

D. P. Faulds conveyed to J. M. Shreve, trustee of C. U. Shreve, 25th June, 1870.

Great fire at Chicago, 9th October, 1871.

General assignment by Charles to J. M. Shreve for creditors, 20th June, 1876.

Charles U. Shreve, conveyance of trust property to Thomas, 9th July, 1877.

Buchannan substituted by court as trustee for creditors, 19th June, 1878.

Bill filed by Buchannan, Trustee, vs. Defendants, in Superior court Illinois, 16th August, 1878.

Charles, petition in bankruptcy, 31st August, 1878.

Thaddeus W. Spindle appointed assignee of Charles, and filed this bill of complaint 27th February, 1879.

Buchannan's Bill vs. Defendants in Superior court dismissed 12th November, 1878.

Thaddeus W. Spindle, appellant, bill in United States Circuit court dismissed 27th September, 1880.

Buchannan's writ of error to Appellate court, Illinois, dismissed October 3, 1880.

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BRIEF AND ARGUMENT OF L. M. SHREVE FOR DEFENDANTS.

It is respectfully submitted, that the first error assigned by appellant, to wit, the dismissal of appellant's bill by the United States Circuit court, involves the third assignment of error.

And the second assignment, alleging error because the court refused to order the trustee to turn over the rents and profits of the premises described in the bill, like the first, is included in the third assignment of error, to wit: that the court erred in not decreeing that appellant, as assignee in bankruptcy of Charles U. Shreve, was entitled to and vested with all the right, title and interest of Charles, as well as the rents and profits accruing therefrom.

The first question then to be determined is, what is the interest which it is proposed to take from the *cestui que trust*, and vest in the appellant, his assignee in bankruptcy, and the reason for so doing. And whether the intention of the testator is to be the headlight by which the will is to be construed, or whether the precatory words of a statute, which executes a trust into a fee, in utter disregard of the intention of the testator, and which was never enacted in the State of Illinois, is to be the means of our conversion.

The intention of the testator is of paramount importance in construing the will and determining whether the estate conveyed is within the operation of the statute of uses of the State of Illinois, where the property is situated, and whether the *cestui que trust* takes any estate at all.

That courts will adopt such construction as will uphold a will, and in construing its purposes and effect will resort to any reasonable intendment, is a maxim of the law—illustrated in

Redfield on Wills, Chap. 9, Sec. 6.
Willis v. *Watson*, 4th Scam., Ill., 64.
Halliday v. *Dixon*, 27th Ill., 33.
77th Ill., 98.
78th Ill., 467.

That the general intent of the testator must govern, even if the special intent must yield.

Redfield on Wills, 433.
2d Washburn, Real Property, 540.

The Supreme court of this state, in *Morrison* v. *Kelly*, declare, "that the grantor may declare any use or trust, "or confer any power upon the trustee which he may "choose, the object not being prohibited by law, public "policy or good morals."

Morrison v. *Kelly*, 22d Ill., 622.
Henser v. *Harris*, 42d Ill., 425.
Broomfield v. *Broomfield*, 43d Ind., 147.
Waldo v *Cummins*, 45 Ind., 421.

The testator, Thomas T. Shreve, possessed of a large estate, having two children by his first marriage, and three by the last wife, thought he might dispose of it as he did, without any violence to the law, public policy or good morals; and to insure his children and the families of the two oldest of them against the casualties and misfortunes of life, and to prevent any possibility of cavil as to one-half of the property, devised it to the children directly, "to do with as they pleased," but the other half conveyed to a trustee, approved by the Louisville Chancery court, *warranting and defending the title thereto against the claims and demands of any and all persons whomsoever*, during the life of the beneficiary, and then descend to the heirs of each.

No provision is made for a failure of heirs, and in such contingency the remainder vested in the trustee and his successors.

Cruise's Digest, Tit. 12, C. 1, *et seq.*

Had he foreseen what occurred in a few short years, the destruction of the property devised to the trustee by fire, the failure of insurance, the shrinkage in values that followed, the taxes exceeding the income from 1872 to 1876, he could not have been more impressed with the wisdom of this provision.

The testator not only directs the legal title be conveyed to the trustee but imposes upon him to do everything to which the seizin and possession is necessary; to take entire charge and control of the property; lease it in his discretion as to terms; insure; make repairs as he may deem proper; collect the rents, and pay net proceeds to child in person.

This is an *executory trust*, and such trusts are not affected by the statute of uses.

Whenever the acts to be done by the trustee necessitate the seizin and possession, the trustee takes the title, and such trust is not within the statute.

Greenleaf Cruise Dig. Tit., 12, C. 1.

Perry on Trust, 359, sec., citing numerous cases; 4th Kent Com., sec. 305.

Padfield v. *Padfield*, 72 Ill., 322, 49th Ill., 135.

The sum of these authorities is, that *executory trusts* necessitate something to be done to effectuate the specific object of the trust, the derivative title being vested in the trustee to enable him to perform the trust, as distinguished from an executed trust when the trustee has merely ministerial duties to perform, and where the rules of property govern without regard to the intention of the testator. The evidence shows this trust has been faithfully carried out by the trustee from the time of the conveyance of the property to him, and is still an *active* living trust, as designed by the testator.

Is the interest of Charles U. Shreve in the trust property liable to be taken in payment of debts?

I submit this interest is not so liable under any process *at law or in equity* in the State of Illinois, but that it is expressly exempted by statute. (Sec. 49 of ch. 22, Rev. Stat. Ill.) This statute provides, "whenever an execution "has been issued against the property of a defendant" and is unsatisfied, the party suing out the execution may file a bill of discovery, which will subject any property held in trust, except, "when such trust has in good faith been "created by, or the fund so held in trust has proceeded "from some person other than the defendant himself."

My learned brother for the appellant, says he thinks the legislature meant to say, that if the person creating the trust puts it in such shape that it can only be reached by bill of discovery, then "it shall be free from the attack of "creditors," but if it is a well defined trust, created for the most benign purposes, then it may be levied on, but he suggests that where it is necessary to resort to a bill of discovery, "it may be assumed that it is such an interest "as will not induce men to give the beneficiary credit."

The evidence shows that this will was spread upon the records of Jefferson county, at Louisville, Kentucky, where every debt was incurred, giving notice to all.

Whenever any adjudicated case seems to trench upon this exemption, it is where the trust accompanied the legal title, or the debtor is given control, or if control and power of sale and anticipation of rents and profits is denied, then of testamentary disposition.

But it may be insisted that though the trust property or any interest of Charles cannot be subjected in execution, nor made liable, even under a creditor's bill, (the last resort of the diligent judgment creditor,) still the assignee in bankruptcy may claim it.

This contention would give to the assignee in bankruptcy an interest greater than the creditors themselves could have, and greater than Charles himself.

The assignee in bankruptcy can take only what is vested in the debtor.

Jarman on Wills, 816.
In re Patterson, 1 Benedict, D. C., 508.
2d Story's C. C., 630.
9th Vesey, 100.

The assignee stands in no better position than the bankrupt, and can claim no more.

Wisnor v. *Kendall*, 3d Story, 507.
Fisk v. *Hunt*, 2d Story, 582.

The assignee takes subject to all legal and equitable claims, and is affected by the same equities.

Cook v. *Tullis*, 9 B. M., 433.
Kelly v. *Scott*, 49 N. Y., 595.
5th Ill., 427.
Bump's Bank., 516.

The bill of *Buchanan, trustee*, v. *Charles* proceeded on and was founded upon the general assignment of Charles to him for the benefit of creditors. That entire document was made part of his bill, claiming that by virtue thereof the trust property was conveyed to him, Buchanan, and the case of *Knefler* v. *Shreve*, 78th Ky., 297, cited by the appellant, fully sustains the claim.

That assignment was made more than two years previous to the petition in bankruptcy, in which he conveys all his property to his assignee "not exempt from execution," and any and all other property not exempt which, by "oversight," may have been omitted from the list.

The learned chancellor says "it is evident that the "property conveyed by this deed is not limited to the "property specifically described"; and decides that the trust property was conveyed, although not mentioned at all, and is of full value as that which is mentioned in an extended schedule. The court say: "The grantor may "have supposed this trust property formed no part of his "estate, yet he intended to pass it to his assignee" (a legal solecism); and, if he did, surely the assignee in bankruptcy has no claim to it.

This decision of the Court of Appeals of Kentucky is quoted by appellant, but not now, for the purpose of showing that the assignee, Buchannon, took under the general assignment for the benefit of creditors; for that would clearly establish why the demurrer to this bill was sustained by the United States Circuit court, but for the purpose of showing that, under the statute of Kentucky (Rec., 43) the Court of Appeals gave remedy against trust property, although there was restraint and alienation in the will creating the trust.

And this leads us to the question whether the will of Thomas Shreve operates in *restraint of alienation* by Charles of his interest in the trust property; and here, I submit, *non constat*, if it do, that by reason thereof the trust would not be upheld.

Numerous decisions, *not authorities*, are cited by counsel, mostly of English courts, based upon the English bankrupt and insolvent laws, rigidly enforcing the Stat. of Charles II, which never had an existence in the State of Illinois. Stat. 29, Charles II, c. 3, § 10 (1689). *Brandon* v. *Anderson*, 18th Vesey, 429, has no application to the case at bar for that reason, nor is it fortified by the case of *Nichols* v. *Levy*, 5th Wall., 433, referred to—for there the trust was upheld on the Stat. of Tennessee similar to the Illinois statute.

The case of *Tillinghast* v. *Bradford*, reported 5th R. I., 205, and so much relied on by counsel that he has embodied the reasoning of C. J. Ames, is not the case under consideration, for that was a beneficial life estate, with power to dispose of the estate by will in the beneficiary; and the chief justice, in discussing the philosophy of the decision, excludes cases where the estate "is given over by "the testator to some one else," as in this case.

Other cases may be found subjecting trust property to the payment of the debts of the beneficiary, based upon the statute of Virginia and Kentucky, which declares that "estates of every kind held or possessed in trust shall be "subject to the debts of the persons to whose use they "shall be held." Rev. Stat. Ky., 230. And the operation of this statute is not affected by any consideration of restraint of alienation. No case has been cited, and I apprehend none can be found, where the provision exists of a *bona fide* conveyance in trust proceeding from some person other than the debtor himself.

The Supreme court of Illinois, in an opinion delivered at Ottawa, not yet reported, June 16, 1883, *Christian Betslay* v. *E. C. Engel*, declare that a devise like this did not come within the rule in Shelly's case, and say: "The "rule in Shelly's case is at most a technical rule of con-"struction, and must give way to the clear intention of "the testator."

The Supreme court of Illinois also declare that although the common law has been adopted in this state, and most of the states, yet it must be understood that it is only in cases where the law is applicable to the habits and conditions of our society, and in harmony with the genius, spirit and object of our institutions.

3d Scam., 120 Ill.
Sanders v. *People*, 3 Gil., 326.

In short "the assistance which the English courts of "equity give to the assignee in bankruptcy, to enable him "to reach trust property or proceeds thereof, is by virtue "of acts of Parliament. And such cases are all decided "upon the statutes, and not upon the principles which "govern us in the United States." And the American cases are founded upon judicial determinations of such states as have adopted the statute of Charles II, notably the states of Virginia and Kentucky, or where the power of alienation or testamentary disposition is expressly conferred upon the beneficiary.

The power of *testamentary disposition* of property by its owner has been fully considered and decided by the Supreme court of the United States, as well as the power of alienation as a necessary incident to a life estate in real property, and the interest and dividends of personal property in the case of *Nichols* v. *Eaton*, 1 Otto, 716.

Justice MILLER, in delivering the opinion of the United States court says: "We do not wish to have it understood that we accept the limitations which the English "Chancery court has placed upon the power of testamentary disposition of property by its owner. We do "not see as implied in the remark of Lord ELDON, that "the power of alienation is a *necessary* incident to a life "estate in real property, and the interests and dividends "of personal property may not be enjoyed by an individual "without liability for his debts being attached as a necessary incident to such enjoyment."

The distinguished justice referring to the English Chancery court says, "this doctrine is one which has been "engrafted upon the common law for the benefit of creditors, and is of comparatively modern origin," and then in the light of adjudication, and the broadest sense of justice, asserts that there is nothing in principle, nothing in public policy, and in many states nothing in positive law, that forbids a testator to place property in trust, for the support and maintenance of the object of his bounty, free from the power of alienation, and free from the demands of creditors of the beneficiary.

The venerable distinguished judge who decided this case in the United States Circuit court, and who has recently laid aside the judicial mantle worn so long, and with such marked ability, after reading the decision of this court in the case of Nichols, and the authorities collated, might well declare, as he did declare, "that the provision in the "will (of T. T. Shreve) is not contrary to public policy, "and that under its provisions there was no estate which "passed to the assignee." *Thaddeus W. Spindle* v. *Jno.*

M. Shreve et al, Chicago Legal News, September 25, 1880, containing full report of decree by Hon. Thomas Drummond, J., U. S. Cir. Court.

As to the deed of Charles to his son, I have only this to say: That deed was made the 9th July, 1877, more than a year previous to his bankruptcy, more than a year before the suit brought in the State court by the assignee, Buchannon, and more than eighteen months before the present bill of appellant. Charles had made the general assignment 20th June, 1876, surrendering everything he possessed, and embracing, as shown by the schedule, property sufficient, under other circumstances, to have discharged all his liabilities. Thus embarrassed, and overwhelmed with debt, he made the conveyance to his son in good faith, and persuaded that in any event his son would minister to the wants of his family, and the grantee, in good faith, as shown by the testimony, that he was satisfied that the assignment of his father would fully pay his liabilities; and for a consideration quite commensurate, when the uncertainty of the tenure is considered and the amount of income.

Whilst I am free to admit that the conveyance from the beneficiary, Charles, to his son, is absolutely void, it is not void for fraud, but void because expressly inhibited by the terms of his father's will.

If the provisions of the will operate in restraint of alienation, and thereby defeat its objects, the power of sale then conferred has been exercised by this conveyance, and long before an assignee in bankruptcy was thought of.

A *bona fide* assignment of all the assignor's property for creditors, executed more than six months before bankruptcy, cannot be assailed by the assignee.

Mayer v. *Hellman*, 9 U. S., 1 Otto, 496.

The remaining subject for consideration is the effect of former adjudication of this case. The counsel for appellant ingeniously insists "that the pendency of the suit of "*Buchannon* v. *Shreve et al.* is no defense either in bar or "abatement to the present suit," and in support thereof cites cases. *Loring* v. *Marsh*, 2d Clifford's Rep., 311, and the "Kalorama," 10th Wallace, 204.

When a bill seeks relief, the defendant may interpose the plea of *lis pendens*, that there is another suit already depending in this or another court of equity for the same matter.

And if the same subject matter has been judicially determined by another court of competent jurisdiction between the same parties, we are accustomed to consider this *res adjudicata*.

The statement of this case advises the court fully of the history of the litigation, and whether this determination of the issues in the State court would influence this court or not, this much can be said, that the whole matter has been fully considered and decided adverse to appellant.

If the law of the state has been construed by the highest court of the state, the federal courts are bound by that construction.

In re Wyllie, 5 L. T. B., 330.

But, I submit, this court is not *bound* by any determination or anything else, save its own lofty convictions of justice and right, and that the law-making power in the State of Illinois has determined the "public policy" of testamentary disposition.

All of which is respectfully submitted.

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